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ABSTRACT

A supplement to an earlier-published volume on bargaining tactics, this document presents specific tactics that can be used in the course of public sector collective bargaining to further management's pre-established negotiating strategies. All the tactics suggested are drawn from the author's personal experience as a public sector labor negotiator. The book is in nine parts, discussing (1) the nature of negotiations in general and of labor negotiations in particular; (2) procedures to follow in preparing for negotiations; (3) maintaining an emotionally peaceful negotiating climate; (4) 32 tactics to avoid using; (5) 56 good general tactics; (6) union tactics that may need to be countered; (7) communications skills and communications traps; (8) listening skills; and (9) contract-writing skills. (PGD)

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BARGAINING TACTICS VOL 2

A REFERENCE MANUAL FOR PUBLIC SECTOR LABOR NEGOTIATIONS

BY
RICHARD NEAL

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This book is dedicated to my grandchildren,

Brian and Melissa

ABOUT THE AUTHOR

Richard G. Neal is a specialist in government personnel administration and every aspect of public sector labor relations. During the past twenty years, Mr. Neal has lectured to thousands of management personnel throughout the United States and Canada and has trained hundreds of government negotiators for county and municipal governments, school districts, colleges, state governments, and federal agencies. He is author of numerous books on all aspects of school and government labor relations, as well as editor of several professional journals and author of many articles. Mr. Neal has represented both management and labor, experiences which have given him unique insight into labor relations.

OTHER PUBLICATIONS BY THE AUTHOR

1968	The Control of Teacher Militancy
1969	Resolving Negotiations Impasses
1970	Laws Affecting Public School Negotiations
1971	Grievance Procedures and Grievance Arbitration
1971	Readings in Public School Collective Bargaining (Editor)
1972	Avoiding and Controlling Teacher Strikes
1973	Municipal Progress (Editor and Contributor)
1974	Collective Bargaining in Virginia's Public Schools
1976	Negotiations in the Mid-Seventies (Editor and Contributor)
1977	Negotiations Games People Play (Editor and Contributor)
1969-1978	Educators Negotiating Service, 10 volumes (Editor)
1968-1978	Negotiations Management, 11 volumes (Editor)
1980	Bargaining Tactics: A Reference Manual for Public Sector Labor Relations, Vol. I.
1981	Retrieval Bargaining
1981	Negotiations Strategies
1982	School and Government Labor Relations
1983	Countering Strikes and Militancy in School and Government Services
1983	Managing Time: An Administrator's Guide

DISCLAIMERS

This book is not intended to provide legal advice on any matter contained herein and should not be used for such a purpose. Where legal advice is needed on any matter contained in this book, proper legal assistance should be sought. The use of the terms "he," "him," and "his" are generally meant to apply to both sexes and are used for literary convenience.

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PREFACE

This book is designed to be a companion to four other books by the author. Those books are: Bargaining Tactics (Volume I), Negotiations Strategies, Countering Strikes and Militancy in School and Government Services, and School and Government Labor Relations. All five of these books provide most of the information which is needed to conduct effective labor negotiations in the public sector. Bargaining Tactics (Volume I) contains approximately 300 tactics which can be used in collective bargaining. Volume II of Bargaining Tactics includes additional tactics not included in Volume I. Although all five of these books contain varying amounts of professional research and literary documentation, the foundation of all of these books is composed of the author's personal experiences in many different situations over a protracted period of time. None of the tactics and strategies offered in any of these books have been taken from any source of theory, but rather, they come from the real world of the practitioner.

The book is divided into nine major parts. Chapter I is very important because it contains original material which describes the nature of negotiations generally, and shows how labor negotiations differs significantly from other forms of negotiations. The second chapter describes a number of specific procedures which should be followed in order to prepare adequately for negotiations. Chapter III is necessary reading, because it reveals the many ways that the emotional climate of negotiations can be kept peaceful. In Volume I of Bargaining Tactics the author presented some 300 workable tactics for the negotiator, but in Volume II, over 30 **bad** tactics are explained. No book on bargaining tactics would be complete without attention given to how the opponents conduct their negotiations; consequently, a chapter on union bargaining tactics has been included.

Chapter VII covers the communications skills needed for negotiations and alerts the reader to some of the traps in communications. Closely related to that chapter a section follows on how to listen at the bargaining table. This chapter reveals how one can be trapped by faulty listening,and it offers some practical rules for effective listening. No book on bargaining tactics would be complete without some advice on how to write a labor contract. The last part of the book contains some practical hard-hitting and specific suggestions for writing a contract that will keep you out of trouble.

A word of caution is in order at this point. No negotiator should attempt to use all of the tactics described in this book. An effective negotiator uses the least energy and the fewest tactics possible to achieve his goal. Furthermore, all of the tactics described in this book must be used at the right time and under the right conditions; otherwise, they could be counterproductive. Also, a negotiator should avoid using the same tactic twice with the same opponent. Keep in mind, too, that every tactic has the potential for success or failure, depending on how it is used. For example, flinching is a swift and effective nonverbal tactic to indicate dissatisfaction with a proposal. It is more effective than any words, but even that tactic used excessively, or used under the wrong conditions, bcomes useless, if not counterproductive. Finally, any tactic selected from this book for use should be used with discretion and common sense. Individual tactics by themselve are no guarantee of success. They must be accompanied by a panoply of good judgment.

CHAPTER I

THE NATURE OF NEGOTIATIONS

Whenever there is communication between persons or groups, some form of negotiations will inevitably occur. Wherever people come together there must be negotiations, at least to some degree. Humans have used negotiations since they first came in contact with each other. Negotiations is as old as civilization, and it is one of the most natural of human behaviors.

What, then, is this omnipresent phenomenon called "negotiations" which is so natural among humans? In its broadest terms negotiations is the way that people go about trying to reach an agreement. It is the process used between the car salesman and the customer to try to arrive at a mutually agreeable price. It is the process used between children in their attempt to reach an agreement on who watches what television program. Negotiations is the process by which the United States and the Soviet Union try to agree on arms control. In general then, negotiations is the process by which people go about finding a way to live together.

For purposes of this book, however, negotiations will be defined more narrowly as the process whereby a labor union and an employer confer, deliberate, discuss, and bargain in an effort to reach an agreement, preferably in writing, on the terms and conditions of employment for the employees. Before we can discuss specific tactics which can be effective at the union bargaining table, we need to explore more deeply the general nature of the negotiations process.

I. The essential ingredients of negotiations

Whether one is negotiating a labor contract, the purchase of a car, or a treaty between nations, all negotiations contain a body of common ingredients. Following is a list of those common ingredients, some of which are contained in all negotiations.

(a) **Negotiations are intended to reach an agreement** or an accommodation, even though force may be used. Granted, not all negotiations result in an agreement, but the intent of negotiations is to arrive at some mutually agreeable arrangement between the parties involved. A thief who purposely and abruptly kills his victim is not interested in negotiating for the victim's money. However, an employee who wants more money from his boss and makes such a proposal is likely interested in negotiating an amicable agreement. In the former example, the thief has no need or desire to reach an agreement; whereas, in the latter example, the employee recognizes the need for a voluntary agreement. It is the overriding recognition that people must generally agree to the terms under which they live with each other which provides the driving force for negotiations. The primary motivation for negotiations, then, is a desire to reach an understanding, an agreement, or an accommodation. Without the desire for an agreement, there is no need for negotiations since the parties would have no reason to deal with each other.

(b) **Negotiations contain common goals.** If there is to be an agreement, then there must of necessity be goals which are common to the parties negotiating. For example, in their discussion regarding arms limitations, the United States and the Soviet Union ostensibly share the common goal of avoiding catastrophic devastation in the event of military conflict. When a car buyer and a car seller meet, they share the same two common goals. The buyer wants the seller to release the car for a certain price, while the seller wants the buyer to accept the car at a certain price. When a union opens negotiations with an employer, they both share the common goal of finding mutually agreeable wages and terms of employment in order to achieve labor peace.

To repeat, negotiations is the process by which two or more parties attempt to reach an agreement on a subject or subjects. The subject or subjects agreed to become the common goals of the parties. And, although the parties may fail to reach an agreement through negotiations, that does not mean that they do not still share common goals. For example, an employer and an employee union may meet at the bargaining table with the common goal of achieving labor peace for an acceptable price to each party. Even though the negotiations may result in an impasse, a labor strike, or no agreement, that does not change the fact that the parties still have a common goal of labor peace. The breakdown in negotiations simply indicates that the parties can't find a way to reach their common goal that is mutually acceptable.

(c) Negotiations contain conflicting goals. The process of negotiations in its broadest sense is the act of one person causing another to take some action or to refrain from taking some action. Negotiations implies some giving and some taking from each party. Inevitably, then, there will be issues between the parties which, at least initially, are in dispute, although ultimately agreement may be reached, or the issues may be left unresolved by mutual agreement. In any case, however, in almost all real negotiations, there must be some degree of conflict sometime during the negotiations process. Keep in mind that the simple exchange of a fixed amount of money for a fixed commodity or service is not negotiations. When we buy a candy bar at the local drug store, that's not negotiations. When we buy a ticket to ride the subway, that, too, is not negotiations. Negotiations take place when two people come together, and as a result of their interaction, some change takes place resulting in an agreement. When we purchase a candy bar we are simply accepting a nonnegotiable commodity at a nonnegotiable price. If we were to discuss the matter with the seller and agree upon some price different than that advertised, that would be negotiations.

When a homeowner wishes to sell his house, he may ask for $110,000, hoping to get $105,000. A buyer wishes to buy that same house and offers $90,000, but is willing to pay $95,000. That's a conflicting goal. The seller's goal is no less than $105,000, while the buyer's goal is no more than $95,000. Although a good real estate agent might consummate the sale by leveraging other factors, the difference between the two goals does constitute a conflict, albeit temporarily. Although it is possible to have a form of negotiations where no conflict takes place, if all such negotiations contained no conflict, there would be no need for this book or any other book on negotiations. Everybody who wanted something would simply ask for it and receive it on terms acceptable to them. Obviously, that's not the real world.

(d) Negotiations contain varying values. In real negotiations there is usually a number of issues between the parties upon which they hope to achieve agreement. For example, when a seller has a commodity available for sale, and there is a potential buyer for that commodity, there are likely to be many issues involved in trying to negotiate an agreement. The buyer wants the item delivered by a specified date. He wants it packaged a certain way. He wants 90 days to pay for it. He wants delivery charges paid by the seller. He wants a warranty period of one year. Other demands could be easily added to this list. On the other hand, the seller wants more time for delivery, and he has only one type of package. Furthermore, he needs his money right away, and wants 20 percent in advance, with the order. The seller is willing to pay delivery charges, but he can't offer any warranty.

In this hypothetical but typical situation the parties would enter into negotiations in an effort to arrive at an agreement on the sale and purchase of the commodity. In the process the parties would likely discover that each issue between them has a different value to each of them. For example, negotiations may reveal that the 20 percent advance payment is no problem for the buyer, but he must have the product within 90 days. On the

other hand, the 20 percent advanced payment is imperative to the seller, but he would find it very difficult and expensive to deliver within 90 days. So we begin to see that in the typical negotiations situation each party attaches a different value to each item under negotiations. It is this aspect of negotiations which makes the process fascinating and challenging. It is here that skilled negotiators can show their true skill in constructing an agreement in which both parties are satisfied.

As far as collective bargaining is concerned, the varying-value concept of negotiations is most applicable. In a typical situation, a labor union may lay on the bargaining table 50 to 100 demands, from a demand for 10 percent higher salaries to a demand for cleaner restrooms, from a demand for paid hospitalization to a demand for longer lunch breaks. The union will attach certain relative values to each of its demands, and so will the employer attach certain values to each of the union's demands. For example, a 10 percent salary increase might be more important to the union than any other demand, while the demand for cleaner restrooms might be a proposal brought forward just to be thrown away. Management, on the other hand, might be hesitant to pay a 10 percent salary increase, unless it could rid the bargaining table of all other cost items. Furthermore, management might consider the demand for cleaner restrooms to be very reasonable. Through the process of negotiations the parties arrange their respective priorities and generally reach a total agreement. Without the process of negotiations, the parties would never be able to make an exchange of their positions, and the labor contract (and the labor peace it represents) would go unachieved.

(e) <u>Negotiations contains exchanges</u>. Since the purpose of negotiations is to reach an agreement on certain issues, it can be logically assumed that no agreement exists without negotiations. Therefore, if we start with disagreement and end with agreement there must have been some changes during the process of negotiations. In other words, there must have been some give and take between the parties; that is, there must have

been some exchanges. For example, a boy wants a used bicycle and finds another boy who may be willing to sell his. The buyer offers $20.00, but the seller wants $25.00. They discuss the matter and agree on a price of $25.00 for the bicycle, but only if the seller throws in a pair of saddle bags. In this example, the two boys have negotiated, and in the process they have made exchanges and changed their positions.

In the case of collective bargaining there must also be exchanges, as is true of all other negotiations. When the union and the employer meet at the bargaining table, the intent of the parties is to reach an agreement by making certain exchanges. To simplify the exchange concept, the union offers the labor of its members in exchange for compensation from the employer. Naturally, there may be dozens of other issues on the table between the employer and the union, but basically they all pertain to an exchange of labor for certain benefits. Without this exchange between the parties, there could be no negotiations. For negotiations to take place, there must be exchanges between the parties, even though the exchanges may not bring about an agreement.

(f) Negotiations contain information (and misinformation). In order for negotiations to take place the parties must have information about the topics under consideration. Whether negotiations pertain to diplomacy, collective bargaining, or real estate, the parties must have information in order to negotiate. For example, if two nations wish to remove certain government-imposed trade barriers between them, both nations must assemble vast quantities of information regarding what would be the implications for such a serious move. With this information the two countries would be in a much better position to negotiate an agreement on the subject of trade between them. Chances are, however, that as this information is collected, some misinformation is also included, either intentionally or unintentionally.

As far as collective bargaining is concerned, there could be no labor contract unless the parties had information about the topics under consideration. For example, let's

suppose that the union has requested that a sick leave bank be established for all employees. Immediately, management has need for information about sick leave banks and how they work. Some of the questions which would arise are: Does the sick leave bank cover illnesses due to pregnancy, delivery, miscarriage, or abortion? How long may one draw upon the sick leave bank? Where does the money come from to pay for benefits from the bank? Many other similar questions are associated with the establishment of a sick leave bank. Without information on the subject, there can be no negotiations, because both parties would operate in ignorance.

(g) **Negotiations contain secrets.** When you approach a car sales person, can you imagine that sales person telling you his bottom price at the outset of discussions? Of course not, and it never will happen. Neither the wise seller nor the wise buyer will reveal to the other his final position. Even when an agreement is reached on price, neither party is sure that the other reached his final position. In negotiations each party wants to get the best deal he can for himself; therefore, he cannot reveal his ultimate fall-back position, except through the process of negotiations. If there were no secrets between parties who wished to reach an agreement, there would be no negotiations, because each party would simply state his final position on the issues between them on a take-it-or-leave-it basis. In the case of the car sale, the sales person would offer to sell at no less than $10,000 and the buyer would offer to pay no more than $9,000, and that would be the end of the discussion. And no car would be sold or purchased.

As far as collective bargaining is concerned, secrets are commonplace. When the union presents its proposals for a labor contract, the union does not expect to get all that it asks for, but the union will not reveal how far it will compromise in order to obtain a contract. By the same token, management does not reveal its final position at the outset of negotiations. It keeps its secrets and moves gradually toward its final position by the use of negotiations.

(h) Negotiations contain risks. When two parties enter into discussion in order to reach an agreement on matters of interest between them, there is usually present some degree of risk. The overriding risk in negotiations is whether an agreement is better than no agreement. For example, when a seller really needs to sell his car and a buyer really needs a car, there exists the potential for an agreement through negotiations. But suppose the seller and buyer can't reach a mutually agreeable price for the sale? Given such an impasse, the seller must decide if it is better to keep the car rather than make further concessions; and, in the case of the buyer, he must decide if he should continue to do without a car or offer a price higher than he had ever intended to pay. Whatever the parties decide, there is a risk. If the car is sold, neither party will know if he pushed the other to his limit. If the car is sold, the buyer is not certain that the car will prove to be worth its price. If the car is unsold, both parties fail to achieve their objective, which was to have the car exchange owners at a mutually agreeable price. The potential buyer goes without automobile transportation, and the potential seller must keep a car that he does not want.

In the arena of collective bargaining, there are many risks which management and the union face at the bargaining table. There is the risk that if no agreement is reached, there will be a strike, which could impose a hardship for both the employer and the employees. Or, if an agreement is reached there is always the risk that management gave more than it should have given and that the union took less than it should have taken. In collective bargaining, there is the risk that language agreed to at the bargaining table becomes a dispute after the agreement has been ratified. There is the risk that either the union or the governing body will fail to approve the proposed contract submitted by the negotiator, thus setting into motion considerable turmoil. In collective bargaining the exclusive representative of the employees runs the risk of failing to deliver enough benefits to the employees, thus jeopardizing the continued support of the employees. In

labor negotiations the employer runs the risk that the loyalty of the employees will shift to the union. In summary, when the union and management face each other across the bargaining table, they both know that risks must be taken if an agreement is to be reached.

(i) Negotiations contain power. When two people come together in order to exchange proposals and counterproposals in order to reach an agreement, both parties have power. If one party has no power and the other party has all the power then no negotiations are necessary since the party with all the power can simply take what is wanted. For example, when a crazed murderer is holding a gun to your head, you have little power to negotiate. However, in most situations where an agreement is sought, both parties have some degree of power. Even a newborn baby has power to negotiate. It cries. In fact, the person with the gun to his head has some power. He has the power to attempt to dissuade the assailant; he has the power to try to bluff the attacker; or, he has the power to try to physically overcome his opponent, if he is willing to take the risk.

As stated before, in negotiations everybody has some degree of power, and power comes in many forms. It is far more than having more money than others, or being stronger than others. Power is a many-faceted phenomenon, and most people fail to recognize the power they have and fail to use fully the power they recognize.

As far as negotiations is concerned, power is knowing what the other person wants. A buyer who knows the lowest price that a car will be sold for has power. Power is the willingness to take risks, for without such willingness there can be no negotiations. Power is persistence. The willingness to cling to a point tenaciously will often wear the opposition down. Power is power perceived; it doesn't have to be real. People respond to you on the basis of the power they perceive in you. Power is knowledge. He who knows most about the subjects under negotiations is likely to fare better than the less informed negotiator. Power is in high aspiration. The negotiator who sets high goals has a better

chance of "winning" at negotiations than the person who has set unambitious goals. In other words, power comes in many forms, and the adroit negotiator knows how to exercise all forms of power.

(j) Negotiations contain trust. When negotiations take place, each party makes a tentative offer in an attempt to reach an agreement. When these tentative offers are made it is assumed that the offers are sincere. For example, when a car sales person offers to sell a car for $10,000, the buyer trusts that the offer is a promise. Should the buyer accept that offer, it would be an unethical act for the seller to respond: "In that case, I want $11,000 for the car." Should the buyer and purchaser agree on purchase terms of the automobile, and the seller promises to have the car ready for pickup by a certain date, there is trust on the part of the buyer that the seller will fulfill his promise. Without trust in negotiations the parties would spend so much time and energy on protecting their positions that little negotiations would take place, and there likely would be no agreement ever reached.

In labor relations, a great deal of trust must exist if the parties are to live together peacefully. Not only must each party trust that the other's offers are sincere, but both parties must also trust that the final labor contract will be adhered to by both sides. For example, management trusts that the union will not abuse the grievance machinery, while the union trusts that management will deliver all of the benefits agreed to in the union contract. Each negotiator trusts that the other negotiator will recommend for final ratification any tentative agreement entered into at the bargaining table. Without such underlying trust, a labor contract would probably never emerge from negotiations.

(k) Negotiations contain wins and losses. In most negotiations each party must expect to give something in order to gain something; otherwise, there would be no need for negotiations. Each party would simply state what it wanted, and if the other party did not agree, there would be no negotiations and no agreement. Although two parties can

agree to something without give and take, there can be no negotiations without give and take. And since give and take must take place in negotiations, it is logical to assume that one or both parties will not get exactly what they hoped for. If there are many issues under negotiation, then between the parties there are bound to be some wins and some losses.

For example, in the purchase of a set of living room furniture, there may be numerous issues to discuss: the type of furniture, the nature and design of the fabric, color combinations, price, delivery date, guarantees, etc. Although the buyer might hope for furniture color coordinated with mauve as the theme, in a striped corduroy fabric, at a price of $5,000, to be delivered within one week, the buyer will probably not achieve those wishes. And although the sales person might wish to sell from the display floor some green furniture covered in polyester, he, too, will likely not achieve his objective. In this hypothetical situation, both parties would need to experience some "losses" before they could win some "gains."

Negotiations between unions and employers contain many wins and losses for both sides, particularly where negotiations encompass many issues. The author has dealt with lists of proposals which contain over a hundred and even over 200 items. In such situations, both sides must be prepared to retreat from their ideal positions to positions of more realism. In the process, the union will need to give up some proposals it had hoped to gain in order to achieve other proposals. Similarly, management will probably concede on some issues which it had not planned to concede on. Hopefully, however, after the entire process is over, both parties will be able to tally their wins and losses and conclude that the final outcome is a win for all.

(l) Negotiations (should) contain compromises. An ultimatum is not negotiations, as being discussed here. A demand that someone do something, without any desire to reach an agreement between the parties involved, is an indication that there are no

alternatives; that there is no need for negotiations. Granted, an agreement can be reached by the issuance of an ultimatum, but no real negotiations have taken place in such a situation. It is also true that the National Labor Relations Act clearly states that neither party is required to make a concession. It is also true that an agreement can be reached by only one party making concessions while the other refuses to budge. Although such one-sided compromises might nevertheless be considered a form of negotiations, generally "it takes two to tango."

Under more typical negotiations both parties make concessions, no matter how slight they might be or how one-sided the concessions might be. Where many issues are involved in negotiations, a compromise is neither expected nor advisable on all issues. A negotiator must examine the entire package of issues under negotiations and decide where concessions can best be made. In collective bargaining, where over 100 issues might be under negotiations, it is possible, and not unreasonable, that no compromise would be made on over half of the issues. But if a labor contract is to be arrived at eventually, both parties will be required to make compromises along the way.

(m) Negotiations contain timing. In all negotiations there is a best time to make an offer, refuse an offer, withhold an offer, or make a compromise. There is a best time to speed up negotiations; there is a best time to slow down negotiations. There is a time for humor and there is a time for anger. In all negotiations there is a time to be generous and there is a time to be tough. And in all of these instances, the timing of the move will determine the success of the move.

In the buying and selling of a real estate lot, it would be poor timing for the seller to offer his lowest price at the outset of negotiations. Chances are it woud be rejected. Likewise, it would be poor timing for the buyer to offer his highest price at the outset of negotiations. That offer, too, would likely be rejected by the seller. But even if either offer were accepted at the outset, both parties would have a distinct feeling that a

mistake had been made. Only after a reasonable period of discussion and give and take is the timing right to make a "final" offer.

In the case of collective bargaining, an employer might be tempted to make its best salary offer at the outset of negotiations in order to save time and "game-playing"; however, such an offer proffered so early in negotiations would in most cases be rejected by the union for a number of reasons. First of all, the union would not believe that such an offer was a best offer. Second, the union would consider such an offer to be in bad faith, because collective bargaining requires give and take. Third, the union would not be able to tell its members how hard it had to work in order to obtain a best offer from the employer.

If that same employer bargaining with that same union would give that same salary offer near the end of negotiations when the agency budget is on the verge of being adopted, chances are that the offer would be accepted, assuming it was a reasonable offer. As demonstrated here, the timing of a specific offer can be made acceptable or unacceptable simply based upon the time at which the offer is made.

In summary, then, all negotiations contain the following ingredients:

- An intent to reach an agreement
- Common goals
- Conflicting goals
- Varying values
- Exchanges
- Information (and misinformation)
- Secrets
- Risk
- Power
- Truth

- Wins and losses
- Compromises
- Timing considerations

Negotiations is the process by which we attempt to obtain something which cannot (or should not) be obtained unilaterally. It is a process whereby change is sought through mutual agreement. It is a process of exchange between people to obtain what they want. Negotiations is the process used when people attempt to change their relationship with each other. It is a process whereby we try to cause somebody to do something or refrain from doing something.

2. The purchase and sale of a car as an example

In comparison to people in many other cultures, Americans of today have limited experience in negotiations. We have all but given up the process. Generally speaking, we accept whatever price is set on a commodity without trying to establish a negotiated price. Only in the name of a car or a house do most Americans attempt to use their negotiations skills.

If you have any doubt that all negotiations contain the ingredients mentioned in this chapter, consider the attempted sale and purchase of an automobile between a knowledgeable buyer and seller. You will find that all thirteen ingredients are present. For example:

(a) Both the buyer and seller intend to reach an agreement on the sale of the car.

(b) Both parties have a common goal, which is to have the car exchange ownership.

(c) There are conflicting goals in the transaction, in that the parties initially are seeking terms which are not mutually agreeable.

(d) The buyer and seller attach varying values to the issues involved in the transaction. The buyer may be desperate for the car, while the seller may be interested, but only under very strict conditions.

(e) In the process of negotiating for the sale of the car, both parties will make tentative exchanges. For example, the salesman offers to "throw in" white sidewall tires, if the buyer will accept his price for the car.

(f) Both parties must exchange a lot of information before they can agree to a deal. The seller must know what the buyer wants and what his price range is; while the buyer must know a lot about the car, as well as the asking price.

(g) The buyer and seller both have secrets. The seller will not reveal his lowest price and the buyer will not reveal his highest price.

(h) Both parties take a risk when they enter into negotiations that they will lose the sale, when if they had just been a little more skillful they could have made the sale. Or, if the sale is made, there is the risk that either the seller sold too low or the buyer bought too high.

(i) In the sale of a car, both parties have power. The seller has the car and will not release it, except under certain conditions. The buyer has the money, but will not release it except under certain conditions. Also, both parties have the power of persuasion.

(j) If the car is to exchange hands, the buyer and seller must trust each other. Both must trust that their offers and counter offers are real. In other words, until everybody signs on the dotted line, each must trust that the other will deliver on promises made.

(k) When it is all over, the seller and the buyer will have some wins and some losses. Neither will have gotten all that they hoped for at the price they hoped for.

(l) If the car is to be sold, both parties will make compromises during the process of negotiations. Both will start out at ideal positions and then compromise their way toward each other.

(m) Both the seller and the buyer will look for the best time to make their moves. Perhaps the buyer will wait until the end of the month for his final offer in the belief that the sales person will be more vulnerable. On the other hand, the sales person may wait until he feels that the buyer is at the end of his rope before a final offer is made.

3. War is passe.

Biochemical and nuclear military weapons have made warfare far more dangerous than conventional warfare of the past. Except for retaliation against a first strike by an enemy, it is difficult to imagine a justifiable full-scale germ and/or nuclear warfare. In such a war there may be no winners--only losers. Consequently, the search for ways to avoid a possible world holocaust has now become more imperative than in the past.

One alternative to military warfare is peaceful negotiations, a process by which nations present their grievances and proposals to each other in an effort to find an accommodation short of full-scale war. When negotiations are successful between nations at odds with each other, it means that both nations decided their assured "wins" under negotiations were preferable to the uncertain wins and losses of a war.

Granted, war is always a form of negotiations, but negotiations need not be a form of war. When a nation declares war on another nation, its intent is to use force to make the other side agree to something. That is a form of negotiations, but it is the type of negotiations we should try to avoid except where we are forced to use military might. On the other hand, when a nation offers to trade wheat for oil, there is likely no intent to use military force to make one party agree to the other party's offer.

The concept that negotiations are usually more profitable than military warfare is applicable to labor negotiations. The best example of the truth of this concept is found in the federal air controllers' strike in the summer of 1981. The air controllers declared a form of war on the federal government and millions of innocent air travelers by abruptly withdrawing their services illegally and without any regard for the lives of persons entrusted to their care. As a result of this warfare, millions of passengers were inconvenienced, businesses underwent hardships, and the striking controllers lost their jobs. Clearly, negotiations would have been preferable to this debacle.

All unions and public employers would be well-advised to note carefully the air traffic controllers' strike for the many lessons it presented, foremost of which is that labor strikes seldom benefit anyone. In most labor impasses the parties are better off to make extreme sacrifices in order to avoid labor warfare.

4. Negotiating is natural

The skill of negotiations is an innate trait distinctive of homo sapiens. It is a skill that a baby is born with--the ability to cry. With that one ability, a baby can negotiate more satisfaction than most adults can with their advanced intelligence. As the baby grows into childhood, his negotiating skills seem to expand naturally. Not only can he now cry, but he can sulk, throw a temper tantrum, threaten to run away, or be very endearing--all tactics employed to get his way. A child, then, by nature seems intuitively to understand the negotiating process. However, as we grow into adulthood, many of us seem to forget these skills, and in many cases we are forced to relearn these skills by attending seminars, reading books on negotiations, and engaging in other similar experiences.

Perhaps one of the reasons that children in many instances are good negotiators is that they do not have many of the powers that come with adulthood. For example,

children do not generally have much money to purchase the things in life they want; therefore, they must rely upon their negotiating skill to obtain what they want. Also, children do not have a position of leadership and power in the family. While the father and/or mother can have their way in family affairs without negotiations, the child must rely upon his negotiating skills to hold his own in the family.

5. Americans are not good negotiators

Unfortunately, the negotiating skills which our American ancestors possessed and the natural negotiating skills we had as children seem to be lost to many Americans today. This development is unfortunate, because changes nationally and internationally have made the skill of negotiations more important than in the past. Americans no longer have a western frontier to flee to in order to seek a freer life or greater opportunity. Today, Americans must accept the fact that there is no more free frontier; consequently, they must learn to live in the society as it exists. To do this successfully requires the ability to negotiate with those with whom we are forced to live among.

In terms of international relations, the skill of negotiations in diplomacy becomes more important with each technological development. This is especially true where nuclear military weapons are concerned. Unless nations learn to negotiate mutually profitable relations, there is the chance of a nuclear holocaust developing before it can be stopped. Unfortunately, Americans do not seem to have superior negotiating skills when it comes to dealing with other nations. Maybe one reason for this is that America has been the number one world power militarily for many years. During that period of time, there was less need for the skills of negotiations since we could rely upon the implied power of our military to convince other nations to see things our way.

Perhaps another reason for our limited diplomatic negotiating skill is the possibility that we are accustomed to instant satisfaction. We are very impatient. We want things

to happen now. On the other hand, the Russians and orientals are more inclined to be patient. And, as has been discussed elsewhere in this book, patience is a definite asset in negotiations.

Also unlike the Russians, Americans are basically generous people who are inclined to share what they have. Whereas, the Russians seem to assume a different posture, which is best described by the statement: "What's mine is mine. What's yours is negotiable." This fundamental difference in attitude between the two nations gives the Russians a definite advantage at the bargaining table.

Unlike consumers in many other nations, Americans do not haggle in the marketplace. Americans are accustomed to accepting an advertised price, except in the case of buying and selling cars and houses, transactions which do not happen frequently in our lives. As a result, many Americans have little opportunity to practice what negotiating skills they may possess. On the other hand, citizens in many other nations are accustomed to bargaining over every purchase in their life. In such countries, there is natural background of cultural experience which can be an advantage at the bargaining table.

Many Americans have another handicap when it comes to negotiations, because they have been taught from childhood to control certain natural emotions, such as anger and affection. And, as discussed later in this book, we will find that expression of emotions can be a useful tactic in some situations. For example, an outburst of anger at the bargaining table in response to a proposal can cause the opponent to modify his position.

6. One man's garbage is another man's treasure

The ideal outcome of negotiations results in both parties winning. For example, in a typical exchange of an automobile, the seller will sell the car for more than his final price and the buyer will buy the car at a price lower than he would have been willing to pay in the final analysis. Bartering is a form of negotiations which almost always results in a

gain for both parties. For example, farmer Smith has two shovels, but needs a pick. Farmer Jones has two picks, but needs a shovel. By exchanging a pick for a shovel, both farmers gain.

Realistically, of course, not all negotiations result in clear wins for all parties involved; but then again, wins and losses in negotiations are relative matters. If the outcome of negotiations is unacceptable to either party, the aggrieved party can return to the previous status of no agreement. In other words, a "win" may be the acceptance of the lesser of two evils. For example, if America feels that foreign crude oil prices are too high, there are other alternatives. America can refuse to buy foreign oil. It can attempt to take over foreign oil fields by military intervention. Or, other similar alternatives might be considered. Among the alternatives available, however, acceptance of a high price for crude oil might be the best of all options. Therefore, relatively speaking, acceptance of high oil prices is a "win." Also, keep in mind that although America may pay more for foreign oil than it feels is fair, America may sell grain to oil suppliers at a price considered by them to be exhorbitant. In other words, in evaluating the outcome of negotiations between nations, one must not only look at the outcome on each issue negotiated between the parties, but one must consider the total outcome of negotiations.

An ideal negotiations exchange is to grant something of little value in exchange for something of greater value, as in the case of the two farmers exchanging a pick for a shovel. An example of such an exchange in collective bargaining would be found in this scenario. Among the many demands made by the ABC Union is a demand that the union president be given three days off with pay to conduct union business. For whatever reason, this demand is very high on the union's priority list. However, as far as the employer is concerned, the issue is of little importance. The absence of the union president does not cost the employer anything since no substitute is required. Besides, the

union president will eventaully perform the work that would be missed during those three days. Even if the union is not granted its request, the union president will still exercise the same leadership with the union. Recognizing that the demand for time off is very high on the union list, management holds off until the price for the concession has risen as high as it will go, at which time the time off request is granted in exchange for some valuable concession to management. In this hypothetical case, management grants little but gains much, an ideal negotiating move.

7. Anything is negotiable—almost

Whenever two people come together with the intent by one or both parties to change their relationship, there exists the possibility for negotiations. Obviously, however, if one party refuses to participate in negotiations, there can be no negotiations. But usually even the most reluctant party can be drawn into negotiations if the price is right. For example, if you were accosted on the street by a person who asked you to give him your shoes, you would most certainly refuse to give up your shoes or even to discuss such a preposterous request. However, if the accoster offered you $20.00 you might become interested. Chances are that at some point, should the offers continue to rise, you would sell your shoes. In that case you would have negotiated the sale of your shoes. In other words, everything is negotiable if the price is right. Of course, there are some exceptions. One human cannot sell another human, regardless of the price. But even that hard and fast rule can be questioned since humans are "sold" by adoption agencies and surrogate mothers.

In labor relations the scope of bargaining under various state laws is generally restricted to "wages, hours, benefits, and working conditions." Many state bargaining laws categorize proposals by the parties in one of three classifications. Either a proposal is a **prohibited** topic of bargaining, which means the subject is nonnegotiable under law; or, a

proposal is **mandatory**, which means the parties are required to negotiate it if it is introduced; or, a proposal is **permissive**, which means that it is negotiable if both parties agree to negotiate the issue.

Under such laws, one would assume that prohibited topics cannot be negotiated, but that is not always true. Even prohibited topics are sometimes mistakenly negotiated by the parties, and in other cases some aspect of a prohibited topic is negotiated. For example, under almost all bargaining laws today, a school board would be prohibited from negotiating with a teachers' union on the determination of what specific children should be expelled from school. Nevertheless, hundreds of labor contracts in public school districts do contain clauses which impinge upon a school board's power to expel or not expel students. Teacher unions have done this by negotiating "working conditions" which assure that unruly students will be less likely to continue attending class. Under the right conditions, an experienced negotiator can take any "prohibited" topic, and by structuring the language of his proposals properly, make that topic, for all practical purposes, negotiable.

For those who wish to protect their rights contained under prohibited topics of negotiations, the caution is this. Even when negotiating on mandatory and permissive topics, be sure that the results of such negotiations do not impinge upon rights covered under prohibited topics.

8. Everybody should win

If negotiations are successful, everybody wins to some extent. Unsuccessful negotiations occur when one party clearly loses. In such cases the losing party has a debt to settle which haunts any future relationships. Therefore, the objective of all negotiations should be that both parties walk away saying, "I won."

The probability that both parties will win in negotiations is enhanced if the parties can choose mutually agreeable criteria and objectives upon which to negotiate. For example, in a private company, in the negotiations between an employee and his boss over compensation, the parties might agree at the outset that salary increases should be based upon improvements in the employee's work, according to some clear indices for measuring performance. By doing this the parties have enhanced the chances of a two-way satisfaction, because the range of negotiations has been limited by prior agreement on the criteria for negotiations. In salary negotiations with a public employee union, there might be prior agreement that all salary increases will be on a percentage basis applied uniformly to the existing salary grid. By taking this approach, the parties have agreed to a basis upon which to conduct negotiations.

Another way to enhance the possibility that negotiations will result in a win for all parties is to agree in advance that negotiations must be mutually profitable. Under this rationale, an employer would agree to grant salary increases to employees, but only if certain employment conditions are changed which assure greater hope for improved productivity. By way of example, an employer could promise part of a salary increase on the completion of approved career-growth educational or training programs. In this way, the employee obtains a higher salary, while the employer has increased chances of improved productivity. By agreeing in advance that the final outcome of negotiations must result in a better situation for both parties, the likelihood of a win for everybody has been enhanced.

(a) Posturing helps everybody win. When the parties open negotiations by making their most ideal offer, they are really helping each other to win. For example, when a labor union asks for a 15 percent salary increase, when it realistically would settle for 8 percent, and management initially offers 5 percent, but is willing to go to 10 percent, both parties are headed toward an agreement which can be viewed as a win for both. In

this over-simplified case, should the parties settle on 9 percent, they could both legitimately claim a victory. Management could claim that it backed the union down from 15 percent to 9 percent. Furthermore, the employer could brag (to itself) that it settled for less than it would have been willing to give in the final analysis. The union, on the other hand, could claim that it forced management to move from 5 percent all the way up to 9 percent. Also, the union could brag (to itself) that it got more than it was willing to settle for in the final analysis.

(b) Lawyers are not good negotiators. Good negotiators are people who can work out agreements that result in a victory for both parties. Lawyers, however, are trained to achieve an outcome which is best described by the statement: "I win. You lose." Lawyers are trained for litigation, not negotiation. Lawyers are trained to win a case under law. Negotiators are trained to structure a workable agreement. The very nature of litigation is the antithesis of negotiations. Negotiations is a process used to bring people together in agreement. Litigation is used in an effort to assure that one person wins while the other loses. While a lawyer looks for a way to beat his opponent, the negotiator is searching for a solution that is mutually profitable. This is not to suggest that lawyers cannot negotiate. They can, if they understand the differences between litigation and negotiation, and if they undertake a program of training for negotiations.

9. Negotiations take longer than planned

No matter how simple negotiations may appear on the surface, they almost always take longer than planned. The duration of negotiations is determined for the most part by three variables:

- The number of issues under negotiations
- The complexity of the issues under negotiations
- The political complexity surrounding negotiations

The simplest negotiations take place between two capable negotiators who are dealing with only one simple issue. For example, the purchase of a pair of shoes in a Mexican market should entail brief negotiations. However, negotiations between more than two nations on a long list of complex issues could take years to complete.

One of the reasons that negotiations always take longer than anticipated is that each party fails to fully comprehend that the other has contrary positions on the issues under negotiations. In other words, most of us simply have difficulty seeing the other person's point of view. We often cannot understand why our proposals are not acceptable. However, if both parties are interested sincerely in an agreement, they should be willing to take whatever amount of time is necessary to complete the negotiations process.

Although this rule is applicable to labor negotiations, it should be qualified. Too much time can be spent at the negotiations table in collective bargaining. If excessive time is spent at the table, arguments are repeated, new issues arise, fatigue sets in, and time can be wasted. No one rule can be set to determine how much time should be spent in actual negotiations between employers and unions, because each situation is different. Suffice it to say that negotiations should last only as long as it takes for each party to thoroughly explain positions. Beyond that, negotiations can become counter productive.

10. Labor negotiations are unique

All negotiations are unique, even though all negotiations share the 13 common ingredients discussed in this chapter. Negotiations differ according to the personalities involved, and negotiations vary according to the general field in which they take place. For example, real estate negotiations require unique understandings and tactics; whereas, negotiations with a terrorist would require a different approach.

As far as public sector labor relations between unions and employers are concerned, there are a number of unique features associated with negotiations in that field. For example:

(a) Public sector negotiations are required by law. Unlike negotiations which take place over the sale of a house, negotiations between a public employee union and a public employer are required by law in most of the states and in federal employment. In all of these situations the bargaining law came about under pressure from public employee unions. In other words, public sector bargaining laws are basically designed to enhance the welfare of public employees and their unions, and not to enhance public services to citizens. As a result, government, per se, gains little from the process of negotiations at the collective bargaining table. When one person wishes to sell his car and another person wishes to purchase that car, the two come together voluntarily, by mutual agreement, because they both have something to gain from negotiations. However, in government service, there would likely be no negotiations if negotiations depended upon mutual agreement. If collective bargaining was totally voluntary in the public sector, a few government agencies would choose to engage in negotiations with employee unions.

This absence of a feeling of mutual gain on the part of government management, and the presence of the feeling among public employee unions that government "owes" them something, creates an adversary, if not hostile, relationship between government and its employees. This requirement that negotiations be conducted under law exerts an unnatural pressure on the parties, causing unions to resort to the use of power to get their way and causing management to make concessions, which in most cases it would not have otherwise made. As stated earlier, very little negotiations take place when a loaded gun is being held to the head of one of the negotiators. Although the analogy may be somewhat exaggerated, government does negotiate under duress in most cases, in that it must negotiate knowing that it has little to gain and much to lose. Any negotiator who

represents either a union or an employer should be prepared to accept the fact that collective bargaining generates a different relationship between the parties than exists in other bargaining relationships. Specifically, such a negotiator must be prepared to deal with an adversary relationship if not a hostile relationship at times.

(b) Collective bargaining involves political considerations. In most negotiations which take place between individuals in a private voluntary setting, there are few political considerations. Labor negotiations in the public sector, on the other hand, take place in a political arena which affects significantly the negotiations process.

For example, labor negotiations in the public sector is a slow process. Many union proposals have political implications which can be resolved only after the involvement of many interests. Unlike negotiations in private industry, where negotiations are essentially a private matter between the union and the employer, negotiations in the public sector can become quite public. Whereas there may be only one boss in a private company for a negotiator to answer to, there may be many bosses in the public sector for a negotiator to answer to. As a result, the process of negotiations can become very protracted. One consequence of such protracted negotiations is an increased risk that tensions between management and labor will escalate.

Because the political nature of government complicates the decision-making process, a degree of management initiative is lost at the bargaining table. As a result, management is often unable to give clear answers to many union proposals or fashion needed solutions to those proposals, all of which adds to a sense of suspicion and mistrust between the parties.

In some states collective bargaining must take place in public. Needless to say, the presence of nonparticipants, especially those with special interests, intensifies the political environment surrounding negotiations. But even where negotiations are not required to take place in public, there is still an audience to contend with. Generally

speaking, that audience is the "public." Specifically, that audience is composed of all of those persons who have a special interest in the outcome of negotiations, which could include taxpayers, the media, politicians, and groups which have something to gain or lose from negotiations.

The largest special interest group of all in the public sector, of course, is composed of public employees. True, employees in private industry also have a special interest in the outcome of negotiations. The threatening difference is, however, that in the public sector organized public employees have a chance to influence their employer through the political process, as well as through the negotiations process. For example, organized teachers have, in many instances, voted in a block to determine who serves on the local school board. In such cases the employees have chosen their own bosses, and the bosses are beholden to the employees. Needless to speculate on the nature of negotiations in such situations. One might like to speculate, however, on what would be the state of American industrial and commercial enterprise today, if employees could determine the ownership and management of the companies they serve. Such an event likely would bring an abrupt end to American productivity and prosperity.

The introduction of collective bargaining into government service has created a potential for unbalancing the historic American political balance, by giving millions of public employees extra power to influence their government. Whereas all other citizens must petition their government to obtain something, public employees can both petition their government and **negotiate** with their government. As a result, government becomes less responsive to the public by falling deeper under the influence of organized labor interests.

(c) <u>There is no competition in the public sector</u>. In private negotiations sellers have many buyers and buyers have many sellers. For example, a person wishing to purchase an automobile has endless options available, and the car sales person similarly

has access to many buyers. Neither party is required to deal exclusively with the other. There are options available for both the car sales person and the car buyer. In other words, negotiations take place in an environment of competition.

Even in labor relations in private industry, union negotiations take place in a general environment of competition. True, the employer must deal exclusively with one representative of the employees, but if the employer gives away too much at the bargaining table, the company will lose to its competitors, because it will be unable to offer a competitive price or competitive quality. Even though the National Labor Relations Act has done much to damage American enterprise, despite this handicap the free market system ultimately protects the consumer.

But when it comes to negotiations in the public sector, we find a totally different situation. First of all, government is a monopoly, which is ironic, considering the fact that government is so opposed to monopolities in the private sector. As a monopoly, citizens have no other option to turn to for the services of government. For example, when the local public trash collectors go on strike, homeowners are left with trash to pile up on their property since no other options exist to remove the trash. In other words, there is no competitive environment for trash collection. As a result, the employer is trapped into a situation where it is forced to deal with only one agent to collect the trash and the union knows it. Without the protective presence of competition, both parties can easily agree to conditions which are not in the best interest of the consumer; that is, the taxpayer.

(d) <u>There is no profit incentive in public sector bargaining</u>. When a buyer and a seller come together in the private marketplace to negotiate a deal, both parties are seeking a gain which they otherwise would not have. For example, in the buying and selling of a car, both the buyer and the seller hope to come out better after negotiations than before negotiations. The seller wishes to unload his car at an acceptable price, while

the buyer wants to obtain a car at an acceptable price. For both seller and buyer, there is the incentive of **profit** to encourage negotiations.

Even when negotiations are conducted under law in the private sector, management is motivated by the need and hope to make a profit for itself and investors in the enterprise. This incentive to make a profit does place a limit on what the company can agree to at the bargaining table. Granted, even with the profit incentive, a company may still give away too much at the bargaining table, but if it goes too far in making concessions to the union, the company may well find itself out of business.

But in public sector bargaining, government can neither make a profit nor go out of business. The absence of a need to make a profit and the absence of fear of going out of business is an open invitation to make concessions to the union which should not be made. The absence of profit incentive and the absence of bankruptcy threat is compounded by the fact that most government agencies are hidebound by law, regulations, tradition, and bureaucracy. When compared to a private company, government agencies are far less flexible in responding to union pressures. Given this environment, mandatory collective bargaining creates the conditions for the erosion of government efficiency.

(e) Government is sovereign. When two people meet in the private marketplace in order to negotiate an agreement, anything under their control is negotiable. They can buy, sell, or trade anything they own, except their children. In such a relationship there is practically no limit on the scope of negotiations, except that decided by the parties. But in negotiations between a government and its employee union, there must be a limit on what is negotiable, because the government is **sovereign**. This means that government is a body in which independent and supreme political power is vested by the people, which means the "people" (including public employees) have voluntarily given certain supreme powers over themselves to their government. If a government is to remain free to make laws to govern the people in response to their petitions, it cannot allow itself to be bound

to labor contracts which serve the interest of the organized employees over the interests of the public.

As far back as 1967, one expert, Kurt L. Hanslowe, a member of the Cornell University faculty, stated that collective bargaining in the public sector ". . . has the potential of becoming a neat mutual back-scratching mechanism, whereby public employee representatives and politicians each reinforce the other's interest and domain, with the individual public employee and the individual citizen left to look on, while his employment conditions and his tax rate and public policies generally are being decided by entrenched and mutual supportive government officials and collective bargaining representatives over whom the public has diminishing control."[1]

As a result of the unique nature of negotiations in union-management relationships in the public sector, there are hundreds of impasses each year between public employees and their employers over what is negotiable and what is not negotiable. The employee union will claim that a demand is negotiable, while the employer maintains that the demand is nonnegotiable. For example, teachers will claim that class size is a required topic of negotiations, but many school boards will maintain that class size is a protected "management right."

In a typical dispute over the scope of bargaining in the public sector, it is the union that always claims that something is negotiable, while it is always the public employer who maintains that the issue is nonnegotiable. This is understandable, since the union has much to gain by expanding the scope of bargaining, while the employer has much to lose by being required to negotiate topics over which it feels it must have sovereign control. Because of the union's efforts to expand the scope of bargaining in opposition to management's efforts to limit the scope of bargaining, the two parties are often at

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[1]Kurt L. Hanslowe, The Emerging Law of Labor Relations in Public Employment (Ithaca, N.Y.: Cornell University, 1967).

acrimonious loggerheads during negotiations. In this respect, then, negotiations in public sector labor relations are different and more complicated than negotiations in the free marketplace.

CHAPTER II

PLANNING FOR NEGOTIATIONS

In the book Negotiations Strategies, the author describes in detail how to develop a master plan for collective bargaining. In that book 18 major strategies are discussed and specific tactics are explained for achieving each strategy. By way of review, those 18 strategies are:

- Understand and capitalize on the economic and political trends which surround collective bargaining
- Anticipate and plan for the major bargaining style to be used by the opposition
- Develop specific skills for maintaining good human relations at the bargaining table
- Identify the major obstacles in negotiations and develop a plan to overcome them in advance
- Know the common mistakes in negotiations and take steps to avoid these mistakes
- Understand what are required and permissible topics of negotiations and stay within those limits
- Understand what are the management rights and protect those rights
- Know how to evaluate each demand
- Know how to keep negotiations moving at all sessions
- Learn when and how to compromise
- Know how to use the granting of benefits to gain concessions

- Know how to conduct retrieval bargaining
- Anticipate and have counter actions for union tactics
- Anticipate unfair labor practice charges and plan to cope with them
- Learn how to bring about closure
- Learn the many dimensions of power and how to use it
- Know how to break impasses
- Learn how to read the telltale signs of a strike and have a strike plan

For those who are seeking practical advice on how to plan for negotiations, Negotiations Strategies offers over 300 specific suggestions on how to carry out the 18 strategies listed above. Since the publication of that book, the author has assembled additional suggestions to help the negotiator plan for negotiations.

1. Establish an employee-employer network for communications

Most employee complaints, concerns, and suggestions can be handled in a manner acceptable to both the employee and the employer if there are appropriate channels of communications and appropriate forums for debate and discussion. This rule is applicable to all employers, whether they are unionized or not. All employees have complaints, concerns, and suggestions which will be expressed by the employees in one way or another. Therefore, management is well-advised to provide an acceptable outlet for such feelings; otherwise, the employees will find an outlet less acceptable to the employer. Where no union eixts, such open communications help avoid unionism. Where unions do exist, such open communicatins help limit the scope of bargaining and assist in avoiding impasses in negotiations.

Some of the communication channels which can be provided are as follows:

(a) A grievance procedure should be available to employees whether or not the employees are unionized. If the employees are unionized and a labor contract exists, a

grievance procedure will most likely be a part of that labor contract. In such case, the definition of a grievance should be restricted to allegations that the contract has been violated. Whether or not arbitration should be the last step of such a procedure depends on a number of factors. If there is no labor contract in existence, then the definition of a grievance can be much broader, assuming that arbitration is not included as the last step of the procedure. The point being made here is that all public employers should provide a grievance procedure for all employees. The exact nature of that procedure, however, is dependent upon the nature of the employer and its relationship with its employees. Those who wish to have specific suggestions on what constitutes a good complaint procedure should read School and Government Labor Relations, by the author.

(b) A few state bargaining laws provide for "meet-and-confer" sessions between the employer and the employee union. Such sessions are separate from collective bargaining sessions and generally are not intended for the purpose of negotiations. The main purpose of such sessions is to allow the exclusive representative of the employees to meet with a representative of the employer in order to "confer" on matters which are nonnegotiable at the bargaining table or on matters which the parties do not care to negotiate. The advantage of such sessions is that they allow the union to have a forum separate from the bargaining table to discuss matters that the union might otherwise try to handle at the bargaining table. The potential disadvantage, though, of such a procedure is that "meet-and-confer" sessions will become bargaining sessions, or that they become just another forum for the union to harass the employer.

But even in states where there is no bargaining law, the "meet-and-confer" process is in use in some instances. In these jurisdictions, the employees and their employer have agreed to meet on a regular basis to discuss matters of mutual agreement. In these jurisdictions it appears that both the employer and the employees view "meet-and-confer" sessions as a viable alternative to collective bargaining. Where an employer agrees to

enter into such "meet-and-confer" arrangements, however, it should be done only after careful consideration and planning, and then only by mutual agreement.

(c) In many governmental agencies, employee councils are a very effective means for keeping communications open between labor and management. In small agencies one employee council representing all employees on a proportional basis is usually sufficient. In larger school districts and government agencies, there may be a need for several employee councils, e.g., one for secretaries, one for custodians, one for trades persons, etc.

These councils should be elected by the employees and they should meet on company time. Each council should elect a chairperson from its ranks, and each council should develop its own bylaws subject to the approval of the superintendent or chief executive. An agenda should be prepared in advance and no topic should be removed from discussion. Furthermore, there should be an assurance made to all council members that there will be no adverse action taken against them as a result of their service on the council. At all council meetings the chief executive or his designee should be present to listen and respond. When questions are raised which cannot be answered on the spot, the council should receive an answer at its next meeting. Minutes should be kept of all meetings.

The use of such councils has many advantages. Where there is no union, employee councils help avoid unionization. Employee councils serve as a safety valve for employee complaints, and they alert management to problem areas. By having employees serve on such councils, they are given a role in helping to influence the decisions of the chief executive, thus creating real "job involvement." Additionally, first-line supervisors are kept on their toes by the presence of such councils, because council members will readily report inappropriate actions by management personnel.

2. One bad manager creates bargaining problems

When the management of a government agency fails to rectify legitimate complaints of employees, those complaints will often appear as union demands at the bargaining table. Therefore, the employer should do everything reasonable to deal with employees fairly and in a consistent manner. Any complaint handled informally between a supervisor and an employee is one less potential problem at the bargaining table.

One certain source of many union demands is a bad manager, and it only takes one in an organization. In numerous bargaining situations the author has been forced to deal with many unnecessary problems at the bargaining table simply because there was one supervisor in the field who conducted himself improperly. In all of these situations, the complaining employee had made a reasonable effort to have his complaint addressed, but failed to obtain sincere attention from management. As a result, such unresolved complaints became bargaining proposals by the union. And as any seasoned negotiator knows, the bargaining table is not the most appropriate place to resolve the day-to-day complaints and problems of employees.

Therefore, when a manager is identified as the source of many legitimate employee complaints, that manager should be investigated swiftly and thoroughly. If guilty of improper behavior, appropriate discipline should be initiated. If, despite such disciplining, the misbehavior continues, the manager should be considered for transfer or termination. Such decisive action by the employer will convey to the employees that management intends to set a high standard of performance for all employees, including supervisors.

3. Rehearse negotiations

Most negotiations require serious preparation. Although there are a few labor negotiators who can go to the bargaining table with minimal preparation, such persons are so few that they should not be used as models by the vast majority of negotiators. Most

labor negotiators need to spend at least four hours in preparation for every hour in negotiations.

One way to prepare for negotiations is to rehearse, and there are several ways to do this:

(a) The author has used an audio tape recorder on a number of occasions to evaluate his method of delivery. The value of using an audio tape over a video tape is that an audio tape isolates one's speech without the distraction of a visual presentation. By listening to one's own voice without other distractions, an opportunity is provided to identify speech patterns in need of improvement. Even though speech patterns are very difficult to change, one should attempt, nevertheless, to strive for constant improvement. If possible, the negotiator should allow another experienced negotiator to listen to his audio tapes in order to obtain a more impartial evaluation.

(b) After an audio tape has been used, a video tape should be made of the negotiator at work. With permission from the other party, this can be done at an actual bargaining session or it can be done at a mock bargaining session. By viewing a video tape, the negotiator can not only evaluate his speech pattern, but he can do so in relation to his physical mannerisms. Although such self-evaluation can be somewhat distressing for some people, the exercise is, nevertheless, very valuable. Again, where possible, the negotiator should have another negotiator view the video tape and make useful suggestions.

(c) The use of mock negotiations is another effective means for rehearsing for actual negotiations. This can be done in several ways. The most effective way is to take the actual union proposals and give them to three or four trusted managers who understand the negotiating process. These managers assume a union role and enter into negotiations with the bargaining team for management. Such an exercise will reveal hidden arguments, develop new tactics, indicate priorities, and help the negotiator

become more comfortable with actual negotiations with the union. Although such mock negotiations may consume time which the participants can ill afford, the exercise in the final analysis proves to be very profitable in most situations.

4. Negotiations should begin before negotiations

Although the above caption may appear a little confusing, it really means that negotiations should take place before the actual exchange of proposals at the bargaining table. Before sitting down at the bargaining table, the negotiator can undertake a number of actions which should help with the actual table negotiations.

(a) For example, there should be an agreement on the format and nature of the proposals to be presented. Ideally, the proposals from the union should be typed double spaced on standard white paper in the exact language that the union would like adopted. Each line should be numbered at the beginning of the line in the left margin and the same line number should be repeated at the end of the line in the right margin. This facilitates the location of language which is being addressed. Also, each page should be numbered in the same place on each page.

In most cases the union should prepare its proposed contract in its entirety, rather than submitting only changes it wants in the current contract. The advantage of this procedure is twofold. First, all contract language is in one place. There is no need to switch back and forth between two documents, which causes considerable confusion and delay. Second, by having the union agree to submit its entire contract as one proposal, there is more justification for management to reject items in the current contract not proposed by the union for change. By allowing the union to present only those changes which it considers in its favor without protest from management, there is the implication that all other parts of the contract shall remain intact without negotiations. Obviously, if a contract has a clause in it which states that all provisions of the contract shall remain

in force indefinitely, unless either party proposes a change, the approach suggested above will need to be modified accordingly. In any case, however, there should be a prior agreement on the number of contract copies which the union is expected to deliver to management.

(b) Before formal negotiations begin on substantive matters (wages, hours, and working conditions), the two negotiators should discuss the ground rules for negotiations in an attempt to arrive at agreements on the following questions:

- Where will the parties meet?
- How often will the parties meet?
- How long will meetings be?
- How will press releases (if any) be made?
- What deadlines need to be met?
- What form will the teams take?
- How will tentative agreements be recorded?
- Who will provide refreshments, if any?
- What information shall be exchanged?
- What happens in the event of impasse?

By reaching an agreement on the above questions, the formal negotiations can be devoted to the important issues of compensation, benefits, and terms and conditions of employment.

(c) Before formal negotiations begin, a great deal of probing can be carried on in an attempt to discover the important issues of the opponent as well as his strengths and weaknesses. Also, such prenegotiations provide an opportunity for the negotiator to lower the aspirations of the union, by indicating that certain issues will receive little compromise. But such prenegotiations need not take place solely between the two negotiators. The same objective can be accomplished by management releasing selective

information which will indicate to the union in advance of negotiations that only limit concessions are possible in certain areas, such as wages. Such carefully orchestrated release of information sets the stage for negotiations by indicating positions even before actual negotiations begin.

5. **The negotiator should not be distracted**

Effective negotiations require time, energy, and concentration. If a negotiator already has a full-time job, or is undergoing stress, or is distracted by other problems, negotiations will not be as successful as they otherwise could be without such problems. Before entering into negotiations every effort should be made by the negotiator's employer to place the negotiator in a working situation which will allow him to function at his best. The responsibility for negotiating a labor contract is so important that its success should not be risked by placing too many other responsibilities on the negotiator, at least during the actual period of negotiations.

6. **Strategy should be flexible**

Although the book Negotiation Strategies describes in great detail how to prepare a strategy plan for collective bargaining, no strategy plan should be so rigid that it cannot be adjusted to the exigencies of unfolding events. A strategy plan is not implemented in a vacuum. Unforeseen events inevitably emerge which require appropriate responses which may not have been included in the original strategy plan. The most likely source of unanticipated events will be the actions of the union. Just as the employer can be expected to have a strategy for negotiations, so should the union be expected to have a strategy plan fully as effective as that of the employer. Therefore, the opponent's strategy should influence your strategy. For example, a management negotiator may develop his strategy on the assumption that his governing body will support him on all

issues, only to find that the union has bypassed the management team and "gotten to" members of the governing body on matters under negotiations.

7. Do some detective work on the opponent

The progress and outcome of negotiations can be influenced by the nature of the opposing team; therefore, a little detective work is called for before formal negotiations begin. Try to find out as much as you can about the people who will face you across the table. By knowing the personalities, strengths, weaknesses, and interests of each opponent, various bargaining tactics can be put to better use. Additionally, by knowing each member of the union team, there is less risk of inadvertently taking action which might unnecessarily harm good human relations.

For example, by knowing the political inclinations of team members the opposing negotiator can avoid making any statement which might be politically offensive. By being familiar with the interests of the other team members, effort can be made to enhance rapport. The author remembers one vivid experience where he discovered that one of the leaders on the opposing team was also a gun enthusiast. During breaks several pleasant conversations were held on the subject of mutual interest, adding a personal and friendly note to discussions too often strained otherwise.

By being aware of the family status of each team member, opportunity is provided to make sincere and friendly inquiries. After all, most people respond warmly to sincere expressions of interest in their families. Knowing the jobs of the other team members is also an important aspect of good human relations at the bargaining table. When the negotiator demonstrates that he knows in detail the work of the other team members, he enhances his own credibility as well as his expertise on job-site operations.

8. Everything is negotiable. Only the the price counts

Every collective bargaining law in the nation, in both the private sector and the public sector, imposes some limit on the scope of bargaining. In many of these laws all topics presented by either party are divided into three categories: prohibited topics, permissive topics, and mandatory topics of bargaining. Prohibited topics are those which by law cannot be negotiated. For example, the appointment of a school superintendent, a city manager, or a secretary of a federal department would be prohibited topics of negotiations. A permissive topic woud be one that is negotiated only by mutual consent of the parties. For example, employee evaluation under many public sector laws is neither a prohibited topic nor a mandatory topic. In such situations, employee evaluation could be a negotiable topic by mutual consent. A mandatory topic of bargaining is a subject upon which negotiations are required if either party introduces the subject. For example, wages are universally a mandatory topic of bargaining (except among most federal employees).

But even in the case of prohibited topics, there are instances on record where such topics have been negotiated and no one raised any objection. In those cases, the item remains a viable part of the labor contract. Additionally, even prohibited topics can be made into either permissive topics or mandatory topics by modification of the demand. For example, in one state there is a public sector bargaining law which excludes teacher evaluation from the scope of bargaining, but in that state many labor contracts contain articles on the subject of teacher evaluation. Why? Because the unions were skillful enough to structure demands in such a manner that the net result was that de facto negotiations took place on evaluation. Therefore, in the hands of a skillful union negotiator almost everything is negotiable--**especially if the price is right!**

The author remembers well a situation where negotiations had been tense from the outset, caused primarily by a school board which was overly management oriented. In that particular situation a contract ws contingent upon agreement on only two items--salaries and a request that the union be allowed to speak at each school board meeting. Both the negotiator for the school board and the school board itself maintained that the request by the union to speak at each school board meeting was a nonnegotiable demand since the structure of school board meetings was at the sole discretion of the school board, to the extent allowed by law. At that point in negotiations the union had failed to make a salary offer acceptable to the employer. Much to everyone's surprise, the union finally made a very acceptable salary offer, but contingent upon being allowed to speak at school board meetings. Over the protests of the negotiator, the school board quickly accepted the union's offer. The lesson learned here was that under the right conditions and with the right price, anything is negotiable.

9. Make a list of what you want

All negotiations begin with deciding what you want from the other party. Without setting such objectives you are at the mercy of the opposition. Collective bargaining should not be a one-way process whereby management bargains and the union collects. The bargaining process is designed as a process which should be mutually beneficial. It is a process whereby **both** parties come to an **agreement** on wages, benefits, and working conditions. This means that both parties have a perfect right to make demands of the other. Collective bargaining should not be a process whereby the union makes up an extensive wish list, presents it to management, and the only question is how many items management will give to the union from its wish list. Such a one-way process gives false encouragement to the union and eventually bankrupts the agency.

Before negotiations begin, management should have a clear picture of what it wants from negotiations. Generally speaking, management should expect to obtain from negotiations the following benefits:

(a) A good day's work for a good day's wage. As a minimum, this means that there can be no diminution in the quantity or quality of work performed by employees as a result of the labor contrct.

(b) The freedom to continue to manage the agency. As a minimum this means that the employer should retain the right to:

- hire, dismiss, demote, suspend, transfer, assign, and promote employees
- contract out
- enforce safety rules
- schedule leaves
- require overtime
- assign supervisors to production work
- discipline for poor work
- determine size and nature of workforce
- set standards for employee performance
- install new production methods
- reward with merit pay
- eliminate classifications or jobs
- restructure jobs
- establish work hours
- establish wage rates for new jobs
- spread work to reduce overtime

(c) The freedom to continue to adopt any policy, rule, regulation, or procedure in the best interests of the agency which does not contravene the labor contract.

(d) The right to labor peace. This means that all employees should be expected to perform satisfactorily all legitimate tasks assigned to them. It also means that management should expect good faith cooperation from the union in implementing the labor contract. Labor peace means there should be no militancy, strikes, excessive grievances, or any other acts by the employees or the union designed to impair the operation of the agency.

In making up a list of what it wants, however, management should be careful in making "demands" of the union. First of all, management does not need to make "demands" of the union since management already has the power to run the agency and direct the workforce. Besides, most demands that management might want to make of the union can be handled through the use of counterproposals. For example, let us hypothesize that management would like to include a "zipper" clause (a waiver on any further negotiations during the life of the agreement) in the labor contract. One way to do this, and probably the best way, would be to introduce the desired clause as a response (counterproposal) to the union's demand for a past-practice clause (a demand that all "past practices" be continued). This tactic is discussed in greater detail in the chapter entitled "Bad Tactics."

On the list of things that management wants from the bargaining process should be language in the existing labor contract which should be modified or deleted. For example, let us pretend that the contract contains a phrase "just cause," which has created problems in the implementation of the contract. Given such a situation, management should move to have the problem phrase removed. Whether management is successful in its efforts is determined by the course of negotiations.

10. Retrievals may be on your want list

During earlier years of relative prosperity public employee unions became generally accustomed to asking for more and receiving more with very little improved performance in return. Although a prosperous society may be able to afford such foolishness for a period of time, such behavior is ultimately doomed to failure. By the opening of the 1980s, it was apparent to most experts that the American economy was in trouble and there was no immediate solution in sight. As a result, the public sector began to discover that it could no longer afford to continue some of the employee benefits that it had granted in previous labor contracts. Consequently, some government agencies found themselves asking at the bargaining table that certain benefits be discontinued, or asking that employees accept salary settlements which actually resulted in a lowering of the employees' purchasing power. The 1980s brought the beginning of "retrieval" bargaining, a process whereby management removes from the labor contract through the process of negotiations provisions which it can no longer afford. Variously referred to as "roll-back" bargaining, "take-back" bargaining, "give-back" bargaining, or "retrogressive" bargaining, they are all expressions of a situation where, to survive, certain benefits or working conditions must be removed from or at least modified in the labor contract. For example, many public jurisdictions have removed paid education and sabbatic leaves from their contracts, because such leaves are viewed to be of low priority in times of economic stress.

Therefore, when management is deciding what it wants from the bargaining process, it may need to review the current labor contract to decide if it can continue to provide the benefits contained therein. For more on how to remove items from the existing contract, refer to the book Retrieval Bargaining by the author.

11. Establish your limits

In all negotiations there are limits beyond which neither party will go. For example, an employer may give a union a final salary offer which the union will not accept. Some employees may continue to come to work for the salary offer which the union would not accept, but some of those workers may do so begrudgingly and only until they can find better employment elsewhere. Both management and the union should attempt to define their ultimate fall-back position on each proposal, as well as the contract in toto. For example, management should have a general idea of the maximum amount of salary offer it would accept as a final offer. However, since wages are only a part of a total money package and a total labor contract, these limits could vary depending upon the outcome on other items. For instance, management might raise its last salary offer, if the union would give up its demand for payment of medical insurance premiums. Or, the union might lower its final salary position if management would improve some other compensable benefits.

Although both parties should have some idea of their ultimate fall-back position on each demand as well as on the entire contract, the final settlement on all issues is dependent upon the course of negotiations. In other words, neither party should take an intransigent position on any item. Both parties should keep an open mind on any issue in a good faith attempt to find an amicable solution. After all, negotiations is the only process by which to reach an agreement, and negotiations requires the keeping of an open mind.

12. Lose by winning

When unemployment is high and employees are frightened about their jobs, most employers can obtain "conservative" settlements which would not be possible under more prosperous conditions. But even in better times, an employer can pretty much get what it

wants in a labor contract if the employer is willing to pay the price. Most employers can pay salaries less than the union will accept, if those same employers are willing to take a strike and live with demoralized and hostile employees. An employer can get somebody to work for almost any salary, no matter how low, but the money saved in a parsimonious salary may well be more than lost in lowered productivity.

An employer does not "win" negotiations when its actions destroy the union and turn the workers against their employer. Therefore, a wise employer goes to the bargaining table with the ultimate objective in mind to reach a satisfying agreement with the union, as close to the employer's terms as good faith negotiation allows. This attitude implies that threats and force will not be used at the bargaining table by either party. Good faith should be practiced by both parties, which means that the union should not expect management to enter into an agreement which it finds repugnant, any more than management should expect the union to sign an agreement which it finds insulting.

Collective bargaining laws create marriages between labor and management from which there is no divorce. In most situations the labor contract binds the parties to a permanent relationship. When one party attempts to harm the other, retaliatory action can be expected. This means that a "win" in one set of negotiations may well turn out to be a lose in succeeding negotiations. Consequently, both management and the union should determine what is a realistic "win" in negotiations. Generally speaking, the only real "win" in negotiations is when both parties walk away from the bargaining table reasonably satisfied.

13. Identify strike issues

Although strikes are illegal in the public sector, there have been over 1,000 public employee strikes within the past decade. Despite legal prohibitions, government employees do go on strike, and rather regularly. Although there is no one single issue over

which public employees strike, there are certain issues which are most commonly involved in a strike. Such issues are compensation, binding arbitration of grievances, layoffs, automatic dues deduction, and bad faith bargaining. Or, in many cases, strikes have been caused by an accumulation of many unresolved issues, resulting in an impasse in negotiatons.

If the price is not exhorbitant, public employers should make every reasonable effort to avoid a strike, because government is generally an essential monopolistic service which should not be denied to citizens. By knowing in advance what the potential strike issues are, management can usually take reasonable actions to avoid a work stoppage. In his book, Countering Strikes and Militancy in School and Government Services, the author discusses in great detail the telltale signs of a strike and the major causes of public employee strikes. This book is highly recommended for anyone entering into labor negotiations where there is even a remote chance of a labor strike or other act of labor militancy.

14. Options=Leverage

The best way to avoid a strike is to be able to survive a strike without material reduction in productivity. The best way to gain a labor contract which allows the continued efficient operation of the agency is to have more than one viable response to each union demand. In other words, the more options an employer has in response to contract proposals, the more leverage the employer has to gain a satisfactory agreement. Unfortunately, unions sometimes rely upon threats and the use of power to induce an employer into making a concession desired by the union. That is why it is so important that management have its own arsenal of weapons in the event that it is called upon to use them. For example, the ability to contract out work can be a sobering influence on exhorbitant union demands. Or, the right to carry out reductions in the workforce can

similarly cause a union to be more responsible in its proposals for bargaining. Contracting out and reductions-in-force are just two examples of options which give management considerable leverage at the bargaining table. For a much fuller discussion of the use of power in negotiations, the reader should consult Negotiations Strategies by the author, which contains a chapter describing the many powers available to management at the bargaining table.

But not all options must be in the form of power. As a matter of fact, the use of raw power should be avoided in collective bargaining to the extent possible. The best negotiations take place where both parties engage in good faith negotiations in an effort to reach a mutually beneficial agreement without the use of threats and power. Consequently, a contract acceptable to management is more likely if management has more than one workable response to each union proposal.

For example, let's say that the union has requested that employees be given more financial protection against absences from the job due to illness or disability. If management wishes to make improvement in this area, there are a number of possible responses. Management could organize a sick leave bank, supported by the donations of employees. A group loss-of-income insurance policy could be provided. Also, medical insurance coverage could be increased. Or, the amount of sick leave could be increased, with or without strings attached.

By having options to a power play by the union and to the individual demands of the union, management puts itself in a strong bargaining position. In summary, then, options= leverage.

15. Do your homework

If the author were restricted to just one sentence in giving advice to negotiators, that sentence would be: DO YOUR HOMEWORK! There is no one tactic which a

negotiator can employ which will serve him better than engaging in thorough homework. But exactly what does "homework" imply? It means engaging in preparatory studies and activities designed to make negotiations successful. More specifically, negotiations homework means:

(a) Preparing a complete strategy plan for negotiations. How to do this is discussed in great detail in the book Negotiations Strategies, by the author.

(b) Development of goals and objectives for negotiations. This means deciding exactly what you want to obtain from negotiations, e.g., a reasonable salary settlement, continuation of management rights, labor peace, etc.

(c) Establishing proper relationships with your employer and its management team. This means that the negotiator must have a working relationship with the chief executive and the governing body with regard to the proper role of each. Successful negotiations cannot result from situations where there are divisions and misunderstandings within the top echelon of management.

(d) Preparing your negotiations team. A negotiator's strength can be influenced by the strength of his team members. Each member should understand his role and be instructed in that role. The team must have a recorder, an observer, a listener, and a spokesman. All members should thoroughly understand the negotiations process. Where possible, all team members should attend a training seminar on collective bargaining.

(e) Understanding the bargaining law. In addition to the laws governing collective bargaining among federal employees, there are 40 state laws governing collective bargaining for state and local employees. Additionally, there are many local ordinances and policies which permit collective bargaining. All of these laws and ordinances are different, and the negotiator **must** be thoroughly familiar with the law under which negotiations are being conducted. Specifically, the negotiator should know exactly what is negotiable and what is not negotiable. He should know what is an unfair labor practice.

He should understand recognition and unit determination. He should know what to do in the event of a negotiations impasse. In summary, the negotiator should understand in detail the rights and obligations of management as well as the union under the applicable bargaining law.

16. Anticipate union demands

A wise labor negotiator does not wait until the union presents its demands to begin preparing for negotiations. Rather, he anticipates what the union will ask for. In this way he can begin his preparation in advance of actual negotiatons, thus saving time and gaining an advantage over waiting for the proposals. Following are the major sources of identifying possible union demands:

(a) Past grievances. Grievances are always expressions of some degree of dissatisfaction with the current labor contract. If satisfaction is not found through the grievance procedure, the item complained of will likely appear at the bargaining table. For example, a class grievance may be lodged by employees who are not given a dinner allowance for overtime work which takes them through their dinner hour. If such a grievance is not won through the grievance procedure, the complaint would likely appear as a demand in the next round of negotiations.

(b) Other contracts. One of the best ways to anticipate union demands is to read contracts from other similar government agencies. This technique has the added advantage of revealing what other unions have been willing to settle for.

(c) Master contracts. Many unions with state and national headquarters publish "master contracts" for their locals to present at the bargaining table. For the most part, these contracts include everything but a request for the kitchen sink, and all the local union needs to do is fill in the blanks to make the master contract appear to be the

creation of the local union. These contracts make excellent study material in preparing for bargaining.

(d) Union publications. Many state and national unions, as well as some locals, publish in-house newsletters. These publications are required reading for a management negotiator since they provide considerable insight into what unions are doing, what they plan to do, and what are the current high priorities of the union.

(e) Line supervisors. First-line supervisors have more direct contact with employees than other members of the management team. As a result, they are valuable sources of information about employee complaints and possible union demands.

(f) Union consultation. It is generally a good idea to maintain open communications with the union during the life of the contract. Not only will such a relationship head off problems, but it will reveal potential issues for bargaining and the rationale for these issues.

(g) Past demands. The past demands of a union are a very good source of possible demands in the future. Part of the long-range strategy of unions is to continue to push for some of the same demands with each new round of negotiations. By becoming familiar with this background, the management negotiator can not only anticipate union demands, but he can resurrect the rebuttals for those demands.

17. Should you use an "outside" negotiator?

In planning for negotiations, the governing body should consider whether to use one of its own managers as its chief negotiator or to employ an "outside" professional negotiator. There is no one correct answer to all situations. In some cases the need for an outside professional is obvious, while in other cases there are sufficient in-house resources. In the thousands of cases where collective bargaining takes place in the public sector, most agencies use an in-house staff member as the chief negotiator. Some of

these jurisdictions would be better off to employ an outside professional for a number of reasons:

(a) Outside negotiators almost always have more experience and a broader experience than in-house staff negotiators. Whereas, a typical government administrator might negotiate one or two contracts at the most per year, a professional negotiator may negotiate ten or more per year, all in different situations.

(b) Due to his superior expertise, an independent negotiator will likely negotiate a contract which is less expensive and more easily administered than would be the case if the contract were negotiated by a less experienced person.

(c) An outside negotiator will absorb the hostilities of negotiations and take them away when he leaves, thus protecting the image of those administrators who must remain full time to work with employees.

The first and most important question asked by those who doubt the points made above is: "How can an outsider understand our situation?" The answer to that question is: "With very little effort." The author has represented many agencies throughout the United States over a protracted period of time. What little problem may have been posed by lack of understanding of local conditions was always more than made up for by the lessons learned in many other situations. Besides, what are team members for? Team members are supposed to provide whatever information is needed so that the chief negotiator can apply his skills.

18. Good qualities for a negotiator

Whether an "inside" or "outside" negotiator is chosen to be the chief spokesperson, there are certain qualities which should be looked for. The traits listed below in the left column are generally helpful in negotiations, while the traits listed in the right column are generally harmful to negotiations.

Good Traits	Bad Traits
Trustworthy	Unpredictable
Healthy	Unhealthy
Patient	Hurried
Reputable	Notorious
Articulate	Inarticulate
Courteous	Discourteous
Placid	Tempestuous
Optimistic	Pessimistic
Prepared	Unprepared
Tactful	Boorish
Thoughtful	Uncaring
Firm	Vacillating
Open-minded	Closed-minded
Friendly	Hostile
Confident	Uncertain
Ethical	Machiavellian
Disciplined	Undisciplined
Trusting	Suspicious
Fair	Unfair
Perceptive	Indifferent
Innovative	Unimaginative
Cooperative	Obstinate
Diligent	Lazy
Truthful	Dishonest
Dignified	Crude
Composed	Uncontrolled
Sociable	Unfriendly
Humorous	Solemn
Sensitive	Callous
Endurance	Frailty
Organized	Chaotic
Flexible	Rigid
Analytical	Unsystematic
Credible	Unbelievable

CHAPTER III

MAINTAINING DECORUM

Ideally, collective bargaining should be a process whereby management and labor exchange proposals and counterproposals in a good faith effort to reach an agreement on compensation, benefits, and working conditions which are mutually advantageous. Unfortunately, collective bargaining is not the same as the negotiations process which takes place voluntarily in the marketplace. The differences between free market negotiations and compulsory collective bargaining have been discussed fully earlier in this book.

The very nature of compulsory collective bargaining breeds adversary relationships between the employer, its employees and the labor union. By implication, collective bargaining laws indicate that the employer is not trustworthy in setting the compensation, benefits, and working conditions of employees, according to market conditions. Collective bargaining laws are based upon the concept that only an exclusive spokesman for all employees can adequately represent the best interests of the employees. As a result of collective bargaining laws, the employer is made out to be an exploiter and the union is cast as the savior. In order to stay in business, the union must constantly agitate far more to excess, thus raising the aspirations of employees only to have them unfulfilled. The whole collective bargaining process sets employer against employee, establishing an atmosphere of reluctant servitude. In the long run, this adversary relationship serves neither the employer, the employees, nor the citizenry. It is here to stay, however, so all parties must learn to make the best of it.

Because of the compulsory nature of collective bargaining in the public sector, the potential for hostile relationships at the bargaining table are ever present. Even without antagonistic relationships, the accomplishment of a labor contract is very difficult to say the least. With acrimonious relationships between the parties, a mutually profitable labor contract is even more difficult to achieve. That is why maintaining decorum in the bargaining process is so important. Once decorum is lost and the parties become ruled by their negative emotions, further productive negotiations are unlikely. The book Negotiations Strategies by the author contains a very detailed chapter on how to control the emotional climate of negotiations. In addition to the suggestions found in that book, the following tactics have proven to be successful in keeping negotiations cool and business-like.

1. Conduct equalitarian negotiations

Although the employer is the manager at the worksite, neither the employer nor the union is the manager at the bargaining table. They are equal parties when it comes to the negotiations process. Neither party can force the other party to do anything. Whatever is done at the bargaining table is done by mutual agreement (except actions required by law, naturally). Some negotiators for management, however, seem not to understand this and conduct themselves at the bargaining table as though they were supervising employees. This approach to negotiations is guaranteed to encounter serious and hostile retaliation from the union. For negotiations to succeed, both parties must view the process as essentially **equalitarian**, which means that neither party is superior to the other. By sincerely accepting this orientation, both parties will find that good negotiations tactics follow naturally.

2. Establish model behavior

Ask yourself how you would like to be treated at the bargaining table. Chances are that your response will be a good guide for how you should treat your counterpart across the table. Decorous negotiations begin with the management negotiator setting the tone. By being punctual, courteous, thoughtful, and empathetic, the negotiator makes it more difficult for the adversary to act in a different manner. By taking negotiations seriously, by doing adequate homework, by listening with interest, and by seeking solutions to problems presented, the negotiator, by example, puts pressure on the opposing team members to conduct themselves in a similar manner. Although there will be many opportunities to respond with anger, such temptations should be resisted in almost all situations. Exceptions to this rule are discussed later in this chapter.

3. Start with the easy issues

Every list of labor demands contains some issues which can be agreed to easily. Some of these issues should be conceded early in negotiations, assuming that there is some reasonable quid pro quo. This sets a cooperative tone early in negotiations and establishes a precedent early in negotiations that collective bargaining is a two-way process. For example, management might accede to a union request to use the employer's copy machine during negotiations sessions, if the union would arrange for coffee and tea to be available. This type of quid pro quo provides satisfaction for both sides. The failure to agree to reasonable and uncostly proposals simply leaves the maker with the feeling that there is no desire to be cooperative. Such feelings are best kept out of negotiations.

4. Find a way for both sides to win

As stated earlier, the best labor contracts are those which are beneficial for both the employer and the employee. That type of contract should be the objective for both management and labor. By seeking a good tradeoff for each concession, there is a greater

likelihood that negotiations will result in an agreement which serves both parties well. Since the nature of compulsory collective bargaining in the public sector is essentially a one-way process; that is, a process of transferring to the union prerogatives previously held by management, there is greater likelihood that the union will gain more in the labor contract than management. This means that management will often find itself in a position where it makes a concession just to avoid labor strife. Even though management may make such concessions reluctantly, it should, in most cases, at least give the impression that the concession results in a very acceptable tradeoff.

For example, let's hypothesize that the union has proposed binding arbitration of grievances, a proposal which the governing body does not wish to agree to. But due to a number of circumstances, the governing body, by a divided vote, feels it is forced to acquiesce. Given such an eventuality, the negotiator for the governing body should present his acceptance of the union's proposal as a good faith effort to finalize a very good agreement. To concede in bitterness would definitely interfere with a relationship that otherwise had been amicable.

5. **Minimize the response, "no."**

"No" is a very unpleasant response to a proposal which is designed to solve a serious problem of employees or to improve the conditions of employment for employees. Abrupt rejections of negotiations proposals give the opponent a ready-made opportunity to enhance his image as the "good guy" at the expense of the employer. Therefore, to the extent possible, a skillful negotiator finds as many ways as possible to avoid abject rejections of union proposals. In the chapter, "Communications at the Bargaining Table," the author discusses in detail nine ways to say "no" without actually saying "no." The alternatives described there should be studied carefully and used on a regular basis in responding to proposals which are objectionable.

All unions make proposals which they know will not be agreed to by management. In many cases these proposals are made simply so that they can be withdrawn. By calling attention to these proposals by saying "no," the maker of the proposal is invited to respond, when, in fact, he would be happy to have the proposal die a natural death, without debate. Every objectionable union proposal which can be rejected without discussion is a definite "win" for management. Not only that, but such "wins" minimize the risk of negotiations turning unfriendly.

6. Demonstrate that serious consideration has been given

The essence of negotiations is the willingness to compromise, but there are many forms of compromise, as discussed in the book Negotiations Strategies. One form of concession is to give serious consideration to a proposal. In many cases the union is satisfied just to know that management is aware of a problem and has given serious consideration to it, even though no satisfactory counterproposal was offered. Furthermore, if serious consideration has been given to a proposal which produces negative results, chances are the union will accept the fact that there are reasonable grounds for the proposal to be rejected.

But when a rejection is being planned for a proposal, the respondent must be able to demonstrate that serious examination has been given to the proposal. This is done by taking a caucus to consider all aspects of the proposal, including possible counterproposals other than a rejection in toto. Upon return from caucus, the negotiator carefully and tactfully summarizes the results of the caucus. This approach will demonstrate to the union team that thorough consideration has been given to the proposal. However, if the proposal is being rejected, the union is entitled to know the reasons for the rejection. If reasons are not given for the rejection, the union is unable to frame alternative proposals in an effort to find some language upon which the parties can agree.

The failure to give reasons for the rejection of a proposal overtly thwarts the negotiations process and is viewed as a bad faith gesture.

7. Pass over emotional items quickly

Many items at the bargaining table are patently laden with emotions. Compensation, workloads, promotion, and dismissals are examples of topics which are extremely important issues to employees. Any item which poses a threat to the union or its members is likely to be dealt with in great emotion. Threats of loss of automatic dues deduction or insinuations of layoffs are bound to be received with considerable trepidation. But even the most innocent counterproposal can be turned into an unfriendly response. Sometimes this is done by the opponent in an effort to intimidate the other team. Regardless of the cause of escalation in the emotional tone of negotiations, every effort should be made to minimize such developments.

There are several ways to gracefully pass on to unemotional topics. The negotiator can call for a caucus, and upon return, simply go on to other topics. If the opponent asks about the issue which originally caused the excitement, just say: "We are not ready to respond further on that matter at this time." Or, in some cases, tension can be broken by a well-timed joke or humorous story. In other cases, the negotiator may tactfully and quickly move on to other less controversial subjects. In intense situations, where no cooling tactic seems to work, a recess may be called. In only one case has the author found it necessary to walk out on negotiations because of the unacceptable behavior of the other team. But that option is available in very serious situations where nothing else seems to work.

8. Deal with the issue, not the person

Labor negotiations are conducted in order to arrive at a written binding contract which governs the wages, benefits, and working conditions of employees. The bargaining

table is not a forum for attacks on the personalities of those present, unless of course their actions warrant such an attack. To the extent reasonable, all attention should be focused on the topic under negotiations and attention focused away from the behavior of the persons. Naturally, however, there are times that a negotiator may behave in such a thoroughly scurrilous manner that his actions must be addressed personally. But more about how to deal with this problem is discussed later in this chapter.

A skillful negotiator should not be distracted by the personal characteristics of his counterpart. A skillful negotiator concentrates squarely on the issues and not the person. Although the opponent's method of delivery may be objectionable in some way, the delivery does not change the message. Regardless of how a proposal is delivered, it remains the same proposal, and that is the issue that should be addressed. In the final analysis, the only thing that counts is what the parties agreed. All of the antics which might be involved on the way to that agreement become meaningless once the labor contract is ratified. So, concentrate on the proposal, not its delivery.

9. Help your opponent find the real problem

Under collective bargaining laws an exclusive agent is chosen by the majority of the employees to represent all of the employees for the purpose of labor relations generally and collective bargaining and grievance processing specifically. Under this condition one would assume that the bargaining agent for the employees always represents the wishes and best interests of the employees. However, this is not always true. In some cases the union may allow its own institutional and political interests to override that of the employees. In other cases the union may not really understand what the employees need and want. The author has experienced a number of such instances.

Therefore, the negotiator for management should make a thorough effort to understand what the employees are really seeking in their demands. For example, a

request for increased paid sick leave may actually be a request to have increased financial protection in the event of protracted disability. In that case, any number of counter-proposals, other than just increasing sick leave, might be acceptable to the union. Loss-of-income insurance, a sick leave bank, or some other protection might answer the real needs of the employees.

By probing for the real issue, management not only has a greater chance of resolving the problem permanently, but also conveys to the employees that it is sincerely interested in the problems that they face. Such demonstrated sincere interest contributes significantly to maintaining a wholesome emotional tone for negotiations.

10. Analyze your own emotions

Quite often our own attitude toward others influences our interpretation of their behavior. If our attitude toward others contains suspicion and fear, we are likely to read into the actions of others unfriendly behavior which in actuality does not exist. When such attitudes are pervasive, negotiations become very difficult because trust between the parties is reduced. If each party is convinced that the other is out to do him in, then every proposal and every action, no matter how innocent, becomes something to be resisted. Obviously, such lack of cooperation between the parties makes an negotiated agreement unlikely.

Consequently, the negotiator should identify and evaluate his own emotional attitude toward negotiations and members of the opposing team. To this end the negotiator should ask and answer the following questions:

- Do I believe in the viability of negotiations as a process for achieving productive labor relations?
- Do I accept the right of unions to represent employees?
- Do I trust my counterpart?

- Am I secure in the adversary relationship?
- Do I feel confident regarding my knowledge of subjects under negotiations?

If the answer to these questions is "no," the negotiator has a serious attitude problem which will surely manifest itself in stressful negotiations, if not unsuccessful negotiations.

11. Don't frighten your opponent

Both the union and the employer have the power to inflict injury on each other. The union can go on strike and perhaps close down the agency's operation, while management can hold back on compensation and benefits. But such actions are contrary to the best interests of the employees, the government agency, and the citizens generally. Although negotiations will present many opportunities to use power against the other party, such tempting opportunities should be resisted. Threats to hurt the other party simply frighten the opponent into defensive action, which may well be retaliatory action against the original offender. For example, a threat by management to lay off employees may be countered by a threat from the union to go on strike, neither action helping to bring the parties into agreement.

Some of the threats by management which usually cause retaliatory action from the union are:

- The threat to remove automatic dues deduction
- The threat to lay off employees
- The threat to decertify the union
- The threat to bypass the union
- The threat to tighten evaluation and introduce merit pay

Some of the threats by the union which can cause retaliatory action from the employer are:

- The threat of a "slow-down"
- The threat to grieve every questionable action by management
- The threat to communicate directly with the agency governing body
- The threat to picket and engage in other attention-getting tactics

12. Disagree without being disagreeable

Most of the demands presented by a union must be rejected, at least in the form as originally submitted. Therefore, it is important that the management negotiator find the most tactful way to reject union proposals. Very excellent suggestions for doing this are presented in the chapter on communications under the heading, "Learn the Many Ways to Say No."

In addition to those tactics, however, there are many other ways to disagree without being disagreeable:

(a) Indicate to the union that its proposal in the abstract and in theory is worthwhile, but in practice there are a number of problems with implementing the proposal. Then identify and explain the problems associated with the proposal.

(b) The issue can be side tracked in the hope that it will disappear or become diffused or modified. Study committees are sometimes used for this purpose.

(c) You can introduce a counterproposal acceptable to management, but which does not address directly the union proposal. For example, the union demands to meet regularly with the chief executive. Management responds to this proposal by suggesting that representatives of the union and representatives of the chief executive meet on a periodic basis.

(d) Show how the union demand does not serve the long-range best interests of the employees. For example, a demand that teachers not be required to meet with parents to

discuss student progress would ultimately harm the teachers, if the demand were agreed to.

(e) You can show how the union demand would run counter to the legitimate needs of the agency. For example, a demand from nurses that all night work be voluntary would be in opposition to the needs of the hospital.

13. Your needs are important, too

Too frequently, collective bargaining is viewed as a one-way process, a process whereby the union asks and management gives. Where such an interpretation of bargaining exists, it is unfortunate, because such a view of the process inevitably leads to the undermining of the agency's efficiency, which serves no one's interests. The bargaining table is not only for the benefit of the union, but for the benefit of management as well, despite interpretations to the contrary.

Whereas the union has a right to use the bargaining process to attempt to negotiate improvements in the wages and working conditions of its members, so at least does management have the right to reject any concessions which impair its rights to manage the agency. And where state bargaining laws impair unilateral changes by management in the working conditions of employees, management has a right to make demands at the bargaining table which are intended to improve agency efficiency, even if those demands are for more and better employee production. Where such demands are warranted, the negotiator should try to show why the acceptance of the demand by the union is in the best interests of the employees. The concessions made by many industrial unions during the early 1980s, such as in steel production and automobile manufacturing, are excellent examples of unions agreeing to management demands in order to keep the industry alive, and hence save the workers' jobs.

14. Nonverbal signs are important

We have all heard that good negotiators have "poker faces." This is not true, nor should it be true. There are times that a negotiator should use facial expressions to enhance communications. The question is not whether such facial expressions should be used, but how they should be used. There's a time to flinch, there's a time to smile, and there's a time to be a "poker face," which is a means of communication.

As the negotiator listens to his counterpart, the entire opposing team is looking for signs which indicate attitudes. Scowls, grimaces, and furrowed brows, when used unnecessarily, simply add barriers to an already delicate relationship. On the other hand, a few smiles, an occasional nod, and frequent friendly eye contacts can tell the opponent that although you may be forced to disagree with his proposal, you feel kindly toward him personally. As stated before, it's very important that attention be focused on the topics under negotiations and not on the personalities involved.

15. Confront problem behavior

When facing an inept or unethical negotiator, one may encounter behavior which cannot be tolerated in the interests of continued negotiations. Such unacceptable behavior might be the use of excessive profanity and obscenity. It might be a refusal to attend meetings or a failure to be punctual, or any other acts abusive of the other party. Before confronting such problems directly, every good faith effort should be made to correct the problem. Many of the tactics which help curtail obnoxious behavior are discussed throughout this book.

If all else fails, however, the harmful behavior of the opposing negotiator must be confronted directly. This can be done in several ways.

- The offender can be asked directly and firmly to cease the objectionable behavior.

- Overtures can be made by individual team to individual members of the other team.
- Negotiations can be recessed each time the obnoxious behavior is encountered.

16. Avoid repeating problem behavior

Sometimes a negotiator unintentionally does something which is objectionable or distracting to the other team. In other cases a negotiator will knowingly persist in repeating some behavior which irritates the opponents. For example, the author remembers one negotiator who responded to many union proposals by stating that the union proposal was "administratively unsound." Each time this phrase was used the union obviously became more irritated. Despite the union's obvious reaction, the negotiator continued to use the objectionable response. As a result, unnecessary bad feelings were caused to develop between the parties. Had the negotiator been more sensible, he would have found other responses to the union proposals.

To avoid this problem the negotiator should monitor carefully the response that his behavior engenders. This can be done through direct observation and attentive listening. It can be done by allowing fellow team members to make constructive criticisms of the negotiator's techniques. Or, the negotiator may try listening to and observing himself on audio and video tapes, respectively. Such self-evaluation can reveal many heretofor hidden and distracting idiosyncracies.

17. Don't take it too seriously

People who are overimpressed with their importance have a tendency to create unnecessary resistance from those they have contact with. True, the negotiator occupies an important position in the union or management organizational structure, but it must be kept in proper perspective. When the negotiator takes himself and negotiations too seriously, he generates resistance from the opponent which otherwise might not be

present. The negotiator who can keep a detached attitude toward negotiations is likely to be more successful than the negotiator who has an impassioned position on every issue.

By displaying excessive concern over certain issues, the negotiator unwittingly gives leverage to the opponent. For example, if a negotiator were to overstress the importance of rejecting a routine union demand, the union would likely demand a higher price to withdraw its proposal from the table.

18. Have patience

Some negotiations problems resolve themselves with the passage of time. As budgets are finalized, as new employment contracts are prepared, as employees become tired of the uncertainties generated by negotiations, and as an impasse is faced, the important issues come to the fore and the unimportant issues begin to fade. For example, a salary offer of 7 percent offered at the outset of negotiations might be laughed at by the union, but that same offer withheld until the end of negotiations might be gratefully accepted. The holding of such an offer requires patience, however.

Although many union proposals cannot be accepted by management, the union's presentation on these proposals should be listened to with interest, except in the case of nonnegotiable issues. In those cases, the union should be informed early in the discussion that the proposals are nonnegotiable, and no time will be spent on those issues. With all other issues, however, management should be willing to listen long enough to assure that the union has been given a chance to discuss thoroughly all salient points. Such listening requires self-control and patience, particularly when the listener already may have made up his mind on the matter under discussion. Nevertheless, the speaker should be allowed to complete his presentation. The mere act of listening is a form of concession, since the refusal to listen to a presentation on a negotiable topic could be ruled to be an unfair

labor practice under some bargaining laws. Therefore, if in doubt, sit back, be patient, and listen.

19. Be for something--not against

As practiced in too many situations, collective bargaining is a process whereby the union proposes and management disposes. This approach to bargaining is unwise in that constant rejection of union proposals makes for rocky negotiations and self-inflicts the "bad guy" image on the employer. Therefore, the management negotiator should find ways to avoid the impression that he is against fair pay for employees, against improved working conditions, and against good faith bargaining. This book discusses many ways to do this.

One way to maintain a positive image is to ignore issues which are hopeless and stress those issues where progress can be made. By doing this the employer is **for** something and the only question is how to achieve the proposal.

For example, the union might propose that a sick leave bank be organized. Although management might want to reject such a proposal on first impression, there are many conditions which would make a sick leave bank acceptable to both management and the union. By finding those conditions, management is **for** a sick leave bank and not **against** a sick leave bank. By taking this approach, the major burden for finding mutually agreeable conditions for a sick leave bank is transferred to the union.

20. Satisfy the personal needs of the opponent

To the extent possible, the negotiations process should be free of any conditions which interfere with the work of the negotiators. This means many things. It means the physical environment for negotiations must be structured. It means that both parties must do their homework prior to each session in order to avoid wasting valuable time in

negotiations. But more importantly, it means that the personal psychological needs of the opponent should be satisfied.

Like everybody else, negotiators need to feel important. They need to be respected. They need to have self-esteem. Consequently, any act which impedes the fulfillment of these basic needs should be avoided. Insults, abusive language, sarcasm, and temper tantrums have no place in the behavior of a professional negotiator. However, praise, empathy, cooperation, and interest do have an important place in negotiations.

The psychological needs of the opposing negotiator can be satisfied in a number of ways:

(a) Whenever the negotiator does something that is particularly good, he should be commended for the action.

(b) Every effort should be made to indicate to all present that you have respect for your counterpart.

(c) When you have an advantage over the other negotiator, care should be taken to exploit that advantage in the least threatening way.

(d) All presentations by the opponent should be listened to carefully. More advice on how to listen is offered in the chapter, "How to Listen."

21. Private discussions have a place

There are occasions where some subjects are best discussed apart from the formal bargaining setting. For example, when there is a need to probe the opponent, a private discussion may reveal more insight into his position than would be obtained in the presence of both teams. The presence of other team members provides an audience to play to, introducing distracting issues which might not arise in a one-on-one discussion. Also, the presence of an audience can deprive the negotiators of needed flexibility to change or modify their positions since statements made in the presence of several

witnesses are difficult to retreat from. Also, private discussions can reveal what issues are emotion laden. These issues are often more discussable when only the two negotiators are involved. In any case, however, off-the-record discussions provide an opportunity for both parties to become alerted to those issues which might be difficult to deal with at the formal bargaining table.

22. Don't take losses personally

As discussed earlier in this book, negotiations contain wins and losses for both parties. Hopefully, however, the final outcome of negotiations will be a "win" for both parties; therefore, losses should be viewed as temporary. If the negotiator is competent, his wins will at least balance his losses, eventually. Besides, most "losses" are nothing more than the quid pro quo of a gain. In othe words, a price must be paid for every win.

For example, although a management negotiator might agree reluctantly to binding arbitration of grievances (a "loss"), the union might have agreed to a very narrow definition of a grievance (a "win" for management). Consequently, a "loss" can only be determined by the total outcome of all wins and losses.

But even where negotiations are less successful than hoped for, chances are that there were circumstances beyond the control of the negotiator which determined the outcome of negotiations. In such cases, a loss should not be taken personally since such introspection hinders the negotiator's ability to maintain a positive attitude toward negotiations.

23. A special word about dress

No one tactic or strategy presented in any of the books by the author will guarantee success in negotiations. It is the total impact of all tactics and strategies which determines the final outcome of negotiations. The author has often been asked about the significance of dress at the bargaining table. The question is difficult to answer, because

the author has worked with so many negotiators who do not dress well, according to conventional dress standards. Therefore, does dress really make a difference? Yes, dress does make a difference, but it is not a determiner of success by itself any more than is any other single tactic responsible for successful negotiations.

The negotiator should dress properly for several reasons:

- Proper dress is pleasant to look at. It therefore helps balance any unpleasant factors in negotiations.
- Appropriate dress helps the negotiator feel confident about himself. Also, others feel more confident when the opposing negotiator is tastefully dressed.
- Proper dress sets a tone for conducting business seriously. Proper dress is an expression of respect for the negotiations process.
- Well-chosen dress provides no distractions to the negotiating process.

For those negotiators who would like to learn more about the importance of proper dress, Dress for Success[1] is a good book to consult. In the meantime, however, here are some basic dress rules which the author has originated:

- The best single rule for a negotiator to follow is to wear good quality conservative suits for all negotiations. All "stylish" extremes should be avoided.
- Conservative sport coats that are color coordinated with slacks, shirt, and tie are second best to suits.
- The best basic colors to deal with are blue, brown, and beige. But these colors must be carefully matched and blended.

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[1] John T. Molloy, Dress for Success, Warner Books, 1975.

- Even with conservative dress, no accoutrements should be worn which are glaringly obvious, such as a flower in the lapel.
- The male negotiator should avoid any colors or accessories which could be considered feminine.
- Use a pen and/or pencil which is obviously of good quality.
- Do not wear glasses with dark lenses which shade the eyes.
- Minimize facial hair. A conservative mustache is acceptable, however.
- Hair should be short to moderate in length. In either case, it should be combed neatly.
- Shoes should be inconspicuous, but clean, and of obvious quality if they are noticed.
- The hands should be clean and the nails groomed and short.

CHAPTER IV

BAD TACTICS

In two previous books by the author, Bargaining Tactics and Negotiations Strategies, several hundred techniques were described for "winning negotiations," but very little was said in these books about bad tactics in labor negotiations. This chapter will be devoted to those tactics which should be avoided in negotiations, but which nevertheless have been used, unfortunately, by less than competent negotiators. But first, a distinction needs to be made between just plain bad bargaining and "bad faith bargaining."

Bad Faith Bargaining in the Private Sector

After almost a half century of collective bargaining in the private sector, a number of negotiating activities have been determined to be in violation of the National Labor Relations Act, the law which governs collective bargaining in the private sector. By examining this background, even though the National Labor Relations Act does not apply to the public sector, one can gain insight into negotiations tactics which should be avoided in most instances.

According to Section 8(d) of the Taft-Hartley Act, ". . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

Quite often a union will accuse an employer of refusal to bargain, but determinations in such cases hinge on whether the employer bargained in "good faith." This determination is difficult, because it requires a subjective evaluation of the attitude and motive of the employer during the course of negotiations. Nevertheless, the National Labor Relations Board and the courts have ruled the following conduct to be in violation of the "good faith" requirement:

- Insistence to the point of impasse upon including in a contract a subject that is outside the scope of mandatory bargaining.
- A refusal to discuss a subject within the scope of mandatory bargaining.
- The failure to grant a reasonable request for information necessary to the intelligent discussion of a mandatory topic.

The inquiring into a refusal to bargain allegation generally depends upon whether the party's conduct during negotiations warrants an inference that bargaining was taking place without a sincere desire to reach agreement. The following conduct might suggest, according to this concept, that an employer was engaging in "bad faith" bargaining:

- Imposing onerous conditions upon either bargaining or the execution of a contract, e.g., demanding that the union withdraw all active grievances.
- Failing to give negotiators sufficient authority to bind the employer.
- Insisting that management unilaterally control wages, hours, and terms of employment.
- Unilaterally granting wage increases or changing other benefits or terms of employment without first consulting the union.
- Insisting upon a "broad" management prerogative clause that would undermine the union's ability to adequately represent the employees.
- Engaging in "surface" bargaining, i.e., merely going through the motions of bargaining.

- Refusing to accede to and failure to offer counterproposals to union demands for a checkoff or other forms of union security.
- Unilaterally or arbitrarily scheduling the day and time of bargaining sessions.
- Demanding that the duration of a contract be excessively long or short.
- Maintaining an inflexible position toward a union proposal.
- Submitting new issues after the parties have reached an agreement.
- Dilatory tactics designed to avoid negotiations.
- Submitting new proposals after several months of bargaining.
- Failing persistently not to compromise.
- Presenting proposals which are patently unreasonable in order to frustrate negotiations.

Bad Faith Bargaining in the Public Sector

At the writing of this book there were 40 states, plus the federal government, with bargaining laws for public employees. Unlike the private sector, where the determination of bad faith bargaining is based upon only one law, there are as many variations of bad faith bargaining in the public sector as there are bargaining laws. Consequently, what is a bad faith bargaining act can be determined only according to the specific bargaining law and the circumstances surrounding the controversy. Nevertheless, an examination of these 41 laws indicates that certain practices are generally viewed as improper:

- Making proposals that would deprive employees of their rights under the applicable bargaining statute.
- Making proposals designed to deprive the union of its rights under the applicable bargaining law.
- Refusing to bargain with the exclusive agent of the employees.
- Setting preconditions to bargaining.

- Failure to ratify an agreement reached between the two official negotiators.
- Unilateral changes in wages, hours, and working conditions without prior discussion with the union.
- Refusal to negotiate mandatory topics.

For a more accurate interpretation of bad faith bargaining, the reader should consult the applicable bargaining laws and the state agency and court decisions which have been rendered.

Just Plain Bad Tactics

Now that we have some idea of what bad faith bargaining is, let us explore tactics which, although they may not violate the applicable bargaining law, are nevertheless unwise to use.

1. Bait and switch

Have you ever been attracted to a store on the basis of an advertisement offering a very attractive price on an item, only to find that the store did not have the item advertised? That is referred to as a "bait and switch" tactic. Its purpose is to attract the customer into the store with the hope that he will make an alternative purchase at a higher price. Have you ever purchased one item from a store, only to find that the item delivered was very similar, but of an inferior quality? That, too, is a bait and switch tactic. All such tactics are designed to get the customer attracted with the hope that he will forego his option to shop elsewhere.

As applied to labor negotiations, a union might offer (or appear to offer) to settle on an issue, say wages, at one level, which management agrees to, only to have the union make a higher offer later on. Such a tactic baits management into revealing its position without exposing the union to the risk of an official offer. Although this unethical tactic

may work once on a naive negotiator, it is a tactic which cannot be repeated. Furthermore, it is a tactic which can backfire by creating a very hostile adversary.

2. **Bluffs that fail**

A negotiator's credibility is a very valuable asset and should be maintained and enhanced to the extent possible. A negotiator will be more successful in obtaining concessions if he is **believed.** If he is disbelieved, needed concessions will come less easily. When a negotiator with high credibility takes a position, the opponents assume he is honest and will deliver on his promises. That is why a negotiator should be careful in saying what he will do or will not do, unless he is prepared to deliver. Once a negotiator fails to fulfill a promise, it is more difficult for the opposing team to believe him in the future.

The author remembers one situation where negotiations had stalled and the union said that it had arranged a mass meeting of all employees, but that the meeting would be called off if a certain concession was made by management. No such concession was made; a union meeting was held; but only a few employees turned out for the meeting. Prior to the union meeting, management was under the impression that the union negotiator had absolute control over the employees. After the meeting, there were serious doubts about the power of the union to fulfill its promises. In that particular case, the union would have been better off not to have attempted a mass meeting.

3. Outrageous demands

During the beginning years of collective bargaining in the public sector, many employee unions made irresponsible demands upon management which were sheer flights into fantasy. In some cases, management responded with equally outrageous demands of the unions. Such bludgeoning tactics achieved little of value for either party. The normal

outcome of such crude negotiations was permanent damage to all parties--the employees, the employer, and the taxpayers.

For example, in one case personally familiar to the author, a union demanded that one of its members sit with the governing body of the government agency. The union also demanded that the employer pay the union dues of the employees. Although there were many other similar ridiculous demands, these two were representative of the quality of the union's contract demands. Goaded into equally stupid behavior, the employer responded by demanding that the union guarantee that all employees would obey all policies, regulations, and work rules of the agency, and that the union pay a substantial fee to the employer to have union dues deducted and to use any property, equipment, facilities, services, or supplies of the employer. Needless to say, negotiations in that jurisdiction did not contribute to labor peace or to a productive working relationship between the employer and the employees.

Even today some unions still persist in making outrageous demands. It appears that this tactic is used to either frighten the employer into making concessions that it would not otherwise make, or the ridiculous demands are laid on the table as "throw-aways." In either case, the tactic is very unsophisticated and does little to help the union, except when faced by incompetent managers across the table. However, not just unions still persist in this unrecommended practice. Too frequently management will make unreasonable demands of the union. Such demands simply infuriate the union, making negotiations more difficult than they need to be. The union knows that management does not need the collective bargaining process to manage the workforce. The union accepts the fact that management already has that power and that management does not need to negotiate its prerogatives. Furthermore, by introducing its own ridiculous demands, management creates a number of risks for itself, such as:

(a) By introducing management demands, the scope of bargaining may be unintentionally broadened.

(b) The union may accept a management demand which was meant to be a "throw-away."

(c) The union may bargain on the management demand, but demand a high price for a concession.

Normally, management can achieve needed leverage through the introduction of "counterproposals," rather than original demands. Whereas an "original demand" is a demand for the union to accept a new topic, a counterproposal is a **response** to an original demand from the union. The use of counterproposals by management, rather than original demands, usually will be sufficient in protecting management's negotiating position.

4. Telephone negotiations

When negotiators communicate by telephone regarding negotiable topics, there is the temptation to try to arrive at understandings. This technique usually should be avoided for a number of reasons:

- By restricting communications to what is **heard** over the telephone, serious misunderstandings can develop.
- Telephone negotiations can introduce subjects which take the listener by surprise.
- It's easy to forget important points while attempting to debate an issue by telephone.
- It's hard to take needed notes and talk on the telephone at the same time.
- The listener cannot see the speaker, thus depriving communications of needed visual clues.
- No team members are present to corroborate the discussion.

If telephone negotiations become necessary, despite the risks, here are some suggestions which should help:

- Try to keep accurate notes.
- Avoid any distractions around you which might take your attention away from the speaker.
- In advance of the telephone conversation rehearse the topics to be covered and the possible discussion that will take place.
- Keep a written checklist of all of the issues to be covered.
- At the end of the discussion summarize what was said and the points agreed to or not agreed to.
- Do not record a telephone conversation, even if permission is given.

5. Unnecessary delays in negotiations

Some negotiators (more often management negotiators) have employed tactics intended to artificially delay negotiations in the hopes that the union would grow impatient and go away. This tactic can be partially successful under some conditions, but more often than not, the tactic strengthens the union. As a general rule, the longer that items lay on the bargaining table, the more aggressive the union becomes. In other words, artificially protracted negotiations, where little progress is being made, give the union a cause around which to rally the workers. Even though there are occasions when delay is legitimate, the general rule is to move negotiations along as expeditiously as is comfortable to the parties.

6. Sticking to a lost point

Inevitably, every negotiator will experience losing a debate or argument in negotiations. Given such a situation, the losing negotiator should not persist in trying to win an argument which already has been clearly lost. When a point is obviously lost, the

negotiator should concede and move on to more productive discussions. By tenaciously refusing to admit defeat, the negotiator erodes his valuable credibility with the opposing team.

7. Loose talk

Many years ago the author learned a lesson never to be forgotten. I had just been employed to represent a school district in midwestern Pennsylvania. Although I had never met the negotiator who would represent the union, I had heard of his reputation as an experienced and competent negotiator. In flying to the first negotiations session, I was accompanied by an associate. In flight we naturally discussed labor relations, a subject of much common interest. As the discussion progressed it turned to my impending assignment and I began to discuss with my colleague the strategy I planned to employ with the union and what type of direction I was getting from the employer. As far as I can remember I discussed my plans in great detail.

As the plane began to land, I noticed the man sitting next to me right across the aisle. His briefcase was at his feet and clearly marked on the briefcase were the initials of the owner which would have been the same initials for the union negotiator. Was it he? I didn't know, because I had never met him. Had he heard what I had said? I didn't know, and I couldn't ask. Understandably, the uncertainty made me anxious and undermined my confidence. I couldn't wait until the next day when I would meet the union for the first time. The next day came. I met the union team and I met the union negotiator. It was he, but he gave no indication that he had seen me before. Was he bluffing or not?

Negotiations proceeded within normal expectations, but the union negotiator was far better than I had anticipated. He seemed quite confident and appeared (my imagination?) to anticipate my moves. Finally, an agreement was reached. As we shook hands, the union negotiator smiled and said: "Hope to see you again on the flight to Pittsburgh."

Had he overheard my conversation on the plane and used it against me? Or, was he playing cat and mouse? To this day, I still don't know, but I do know one thing, that lesson was a good one. Because of that experience I have learned to be very tight-lipped about anything to do with negotiations.

On another occasion, however, the tables were reversed. I was having lunch in a dining room in a hotel outside of St. Louis. I was there because I was representing a jurisdiction nearby. For some reason I became aware of the conversation at the table next to me. The more I listened, the more I realized they were talking about the negotiations I was involved in. The discussants really got my attention when one of them said: "I understand they (the employer) have hired a negotiator from Washington, D.C., and from what I hear, he is a real horse's ass." After that, I had to listen. From that conversation I gained considerable insight into some of the plans of the union since one of the persons at the table was an officer in the union.

8 Low ball, high ball

A man walked into a used car lot and found the exact car he was looking for at a price that was far below anything he had seen elsewhere. After the buyer and the salesman shook hands on the deal, the salesman said: "Now, how would you like to have an engine for that fine car?" Whenever an offer is made to sell something at a price lower than the true price of the final sale, the tactic of "low-balling" is being used. This unethical technique is based upon deception and is designed to get the buyer hooked, so that he will not purchase elsewhere. The reverse of low-balling is "high-balling," which is the process of offering to pay a premium price for something, only to have conditions attached after the seller (or buyer) agrees to the price. Both tactics are designed to bait the buyer (or seller) by the use of a ruse.

The author is personally aware of a number of situations in public sector negotiations where the fiscally dependent employer practiced a form of high-balling by agreeing to settle on a salary figure higher than the employer knew would be approved by the governing body with funding powers. If the unethical tactic works, it is supposed to put the union in a position where it has no choice but to accept a salary settlement less than agreed to at the bargaining table. The danger with this tactic, however, is that the overall budget of the employer will be cut, leaving the issue of salary to be settled between the employer and the union. An example of this scenario takes place when a fiscally dependent school board agrees to a salary figure higher than the county board of supervisors will agree to. The county board cuts the overall school board budget, but gives no direction as to where the cuts are to take place. The school board, then, is left to either reduce the agreed-upon salaries, or cut other areas of school district operations.

High-balling and low-balling, and other tactics designed to obtain gain by duping the opponent, are considered bad tactics and should not be used. Although they may work a few times, there is always the risk that they will backfire.

9. **The killer instinct**

Some labor negotiators seem to approach negotiations as if it were some form of warfare, where one party must win and one party must lose. True, warfare is a form of negotiations, but negotiations is not a form of warfare. Negotiations might employ the use of power or the threat of power to exact a concession from the opponent, but under most conditions of labor relations negotiations should be a peaceful process of exchanging proposals and counterproposals in an effort to reach an agreement to live by. But some employers see the union as an enemy which must be destroyed, or at least emasculated, while some unions see the employer not as a benefactor, but as an exploiter. These views are unfortunate, because they create a form of collective bargaining which does not

usually result in a productive relationship for anybody. Therefore, approaching negotiations with the aim to destroy or harm the opposing camp is generally a bad tactic, unless unusual circumstances are involved.

10. Negotiating with a fanatic

Once in a great while one must deal with a "negotiator" who is irrational and seems more bent on fighting than winning. These persons demonstrate their irrationality by saturating negotiations with ad hominem attacks, by refusing to accept patently reasonable offers, by using abusive language, and by engaging in other similar scurrilous behavior which indicates that the negotiator has no intention of reaching an agreement.

When faced with such a reprobate, and all reasonable efforts fail to bring about tolerable behavior, the best solution is to find some way to break off direct relations with that person. In some cases, it may be possible to convince the opposing camp that a labor contract is impossible as long as the troublesome negotiator is the spokesperson. In other situations, it may be necessary to break off negotiations indefinitely, or in the final analysis, it may be necessary to establish that an impasse has been reached. This last tactic will bring into negotiations a professional mediator or a fact-finding panel, either of which might be able to better control the errant negotiator.

11. Allowing the boss to negotiate

In the beginning years of public sector negotiations under law in the mid-1960s, the author conducted numerous seminars throughout the nation on labor relations. In discussing the topic of who should be the negotiator, invariably some members of the audience would insist that the chief executive (or superintendent) should be the chief spokesperson in negotiations. The rationale of these persons was that the negotiations process was so important that it should not be delegated to anyone else. Fortunately,

with the passage of time, most chief executives have learned to respect the fallacy of being one's own negotiator.

There are a number of reasons that the chief executive should not be the chief negotiator in collective bargaining:

(a) Since the chief executive has the power to make most operational decisions in the agency, there is no higher administrative level to refer to before making a decision. In other words, when the chief executive is the negotiator, the union has a right to expect that the chief executive will give prompt and final responses to all union proposals since there is no higher level of authority to consult. This reasonable expectation of the union generates unnecessary pressure on the chief executive to make the requested concession.

(b) When the chief executive is serving as the chief negotiator, he is thrust into a more extreme adversary role than would otherwise be. When the chief executive rejects union proposals, the rejections are associated with the chief executive personally. As a result, he quickly becomes the "bad guy" and thus loses a degree of support from rank and file employees.

(c) Seldom is the chief negotiator a skilled negotiator since he is accustomed to giving directions without argument. When giving orders is a way of life, negotiations can be an infuriating process.

12. Excessive use of final offers

As stated previously, a negotiator's credibility is partially based upon his consistent performance on delivering on promises made. Once a negotiator begins to fail in delivering his promises, those who must rely upon him begin to have doubts, and that is bad for both parties. In order for negotiations to work properly, both negotiators must know that the other has the ability to fulfill his claims.

A frequent mistake made by the novice negotiator is to give a final offer before he actually has run out of moves, or to work himself into a position prematurely where he has no choice but to give a final offer. A final offer is a form of an ultimatum, and ultimatums are the antithesis of good faith bargaining. The labor contract should be the result of compromise and agreement without duress. When an ultimatum is given, it means that cooperative effort is over and force becomes the motivator.

Although there is a time for a final offer, the tactic should be used sparingly. After a negotiator has made a "final" offer, only to be convinced to make another offer, and another offer, the meaning of "final" becomes weakened and the word of the negotiator becomes unreliable. Final offers can be used only a few times. After that they lose their effectiveness.

13. Unrecognized weaknesses in one's position

An occasional negotiator may fail to recognize and appreciate an inherent weakness in a position he has taken in negotiations. By failing to recognize this flaw, the opposing team is encouraged to respond in a forceful way. For example, an employer may demand that all negotiations be held in the main board room of the employer, while the union is willing to alternate between the board room and another reasonable location. Given this hypothetical situation, with no extenuating circumstances, the employer is failing to recognize and appreciate the weakness of its position. A universal axiom of negotiations is that negotiations should take place at mutually agreeable places. Everyone recognizes this, and it is therefore foolish to persist in face of the opponent's objections. By blindly adhering to such a position, the employer is setting itself up for a form of reprisal from the union and establishing an unhealthy tone for negotiations. Furthermore, such unreasonable behavior by the employer undermines whatever respect the union may have for the employer.

14. Negotiating under pressure

No one is immune to all forms of stress. Everyone, to some degree, is hampered in their performance by the presence of some type of stress. True, some forms of stress are good, because they force the mind and body to focus on a certain task. However, as far as negotiations are concerned, any stress at the bargaining table should be on the other side. The experienced negotiator has learned that the best decisions in collective bargaining are made free from undue pressure. When we are under pressure, our bodies can become uncomfortable and our emotional state can become unstable. Under those pressures, the negotiator might make an unwise concession, just to gain relief from the stress.

Just as the opposing team can be expected to keep the pressure on, so should the other team try to keep the pressure away from itself. This can be done in several ways:

(a) Try to keep the initiative at all times. Among other things, that means making proposals, rather than responding to proposals. It means always being ahead of the opposing team, always knowing more about what's going on than does the other team.

(b) When uncertain of what to do, take a caucus and consult with the team members.

(c) Have an agenda for each meeting and have all homework completed for that agenda.

(d) Don't be intimidated by deadlines, particularly by false deadlines, or by deadlines which can be changed.

(e) Avoid marathon meetings and frequent meetings.

(f) Try to keep the ball on the other team's court as much as possible. For example, try to leave meetings with the bulk of the homework to be done by the other group.

15. Giving away free information

Any information which is helpful to the opposing side should not be given away if that can be avoided. To the extent reasonable, when helpful information is to be revealed, there should be something given in return. This advice should not be carried to absurdity, however, since there are times when decency calls for a kind gesture. For example, if the union should ask for the location of the restrooms, a proper response would not be "look for them." However, information which can affect the outcome of negotiations should be released with care.

For example, the fact that key information is not available to support a management proposal should not be revealed at all. Or, in the case of a request for an advanced copy of the agenda for each meeting of the governing body, management should exact from the union some equal bit of information, say a copy of all communications sent to the union membership.

Sometimes information useful to the opposing team is given away unintentionally, or given away absent recognition of its value. For example, a number of opposing negotiators, on different occasions, have revealed to me that they were having problems with the leadership of their organizations. That was valuable information to have. Or, in another case, a union official told me that a straw vote for a strike had been taken, and most of the respondents did not want to strike. That, too, was valuable information. The lesson being stressed here is: **Try to control the information that goes to the other camp.**

16. Losing by winning and winning by losing

Workers in the American automobile industry and workers in the American steel industry have usually "won" labor negotiations, if wage levels in those industries are an indicator. By the end of the 1970s, these workers had won, largely through bargaining clout, wages that were generally 50 percent higher than wages in comparable industries.

Although the serious problems now faced by the American steel industry and the American automobile industry are not solely the result of collective bargaining, concessions at the bargaining table on compensable benefits and working conditions have been one of the most important causes of the decline in those industries. Did the unions in these industries really "win" during the 1950s, 1960s, and 1970s when the winning meant the possible destruction of those industries, taking with them the jobs of thousands of present employees and future employees? Did the union win, if America becomes dependent on other nations for steel? It appears these unions won by losing!

An employer, too, can lose by winning. Any employer can "beat" a union if that employer is willing to pay the price. A private company can destroy a union if the private company is willing to go out of business rather than concede to the union. A public employer can "beat" a union if that public employer is willing to risk the loss of essential services to the public. In other words, any employer can beat any union if any price is not too high. The idiocy of such a win, however, should be apparent. The only sensible choice for a union or an employer is to find common ground upon which they can both agree to live.

17. <u>Accepting a first offer</u>

Americans being accustomed to accepting fixed prices on merchandise have been conditioned not to quibble. That is not good conditioning, however, for collective bargaining. In contract negotiations both parties take ideal positions at the outset of negotiations with the expectation that concessions will be made by both sides. Even if a first offer seems acceptable, it should not as a rule be accepted, at least at the moment it is offered. When a first offer is accepted without hesitation, it creates several responses:

- The offerer concludes that his offer was not enough, thus encouraging him to be tougher in the future.

- The offerer is deprived of a needed opportunity to work for concessions.
- The party accepting the first offer loses leverage for some future exchange.

There are times when a first offer can be accepted. For example, it is generally a good practice to agree to a few items at the outset of negotiations to indicate to the other party that agreements are possible. This helps to set a positive tone for tougher negotiations which follow. Or, a first offer can be accepted, if it has been delayed and coupled with some other items or items. In other words, the first offer is accepted, but only if certain concessions accompany the acceptance.

18. Excessive use of histrionics

Melodrama and affectations have a legitimate place in negotiations. There is a time to display anger, but in most cases it should be feigned, as a negotiating tactic. But as with most tactics in negotiations, they should be carried out in moderation. The use of anger is effective only if used at the right time and under the proper conditions. Anger should be reserved for those special occasions when it is needed most, but even then, the degree of anger should be commensurate with the nature of the issue under discussion.

The author has encountered a number of negotiators who would use profanity, pound the table, threaten bodily harm, and display other similar tantrums to frighten the opposing team into making concessions which otherwise would not be made. When used sparingly, these tactics help underscore the important issues, which is necessary. But when used excessively, histrionics simply confuse the important issues with the unimportant issues, making the use of quid pro quo more difficult.

19. Splitting the difference

When two parties are apart on an issue, there is often one generous person who thinks the answer is to "split the difference." One tactic employed by competent union negotiators is to work the opponent into a position where splitting the difference would be

advantageous to the union. In such a situation, management may view splitting the difference as only fair, but the result might be a clear "win" for the union. Furthermore, should an impasse arise, both parties should examine what splitting the difference would do to their respective positions since the first inclination of a mediator is to give some to the union and give some to the employer.

The first negotiator to offer to split the difference has revealed a position which is always helpful to the other side. For example, let's say the union confidentially will settle for $8.50 per hour, but would like $8.75 per hour. Its last offer was $9.00 per hour. Management, on the other hand, would like to settle for $8.25 per hour, but is willing to go to $8.50 per hour. Due to a number of reasons (fatigue, pressure, impatience, naivete), management says: "Let's wrap it up and split the difference," a thoroughly well-intentioned effort. But, as far as the union is concerned, the well-intentioned effort was an official offer to pay **at least** a minimum of $8.50 per hour. Now the union is in an advantageous "split-the-difference" position, or in striking distance of $8.75 per hour. Given equal persuasiveness on each side, a mediator would likely push the parties toward an $8.75 settlement, a settlement more favorable to the union than to management.

20. Threats

In negotiations a threat is an expression by one party of an intention to inflict harm on the other party. The purpose of a threat is to cause the other party to do something or to stop doing something as desired by the first party **without the need to carry out the threat.** There must be some reason why people who threaten don't simply bypass the threat and do what is threatened. The answer is that the actual implementation of a threat carries with it risks of harm to the threatener. A threat, then, is a way of saying: "Do what I want you to do, because if you don't, I'll hurt you, and as a result, I may hurt

myself." Those who are willing to carry out their threats, however, do so based on two assumptions:

- The party threatened will be hurt more than the party which threatens, and
- the damage done to the threatener will be more than offset by the concession made by the threatened party as a result of the threat being carried out.

For example, when a union threatens to go on strike for a salary $2.00 per hour higher than management has offered, the union, first of all, is saying it prefers not to go on strike. Second, the union is saying, however, that if a strike is carried out, the union has calculated that it will gain more from the strike than it will lose.

The trouble with threats is that they move negotiations into a different relationship between the parties. Without threats the parties seek solutions based on reason, cooperation, and compromise. With threats, "solutions" are based upon the use of harm to exact a concession. Furthermore, concessions exacted from threats and acts of harm are not permanent, because the harmed party will eventually strike back. No self-respecting person can live with being forced to do something against his will, if there is any way to win back the loss. And, if winning back the loss is not possible, then there is always revenge!

As far as management is concerned, threats are seldom needed or justified. Mangement can convey a fixed position simply by being very firm and giving clear reasons for its positions, and convincing reasons why threats will not alter that position. Once management introduces a threat, it gives the union a cause celebre to rally the troops. After all, one motivating force behind collectivist actions is to gain protection against a threat. So, don't threaten!

21. Watch the messenger

In almost all situations negotiations should be carried out between the two chief negotiators on a face-to-face basis. The use of intermediaries should be avoided as a general rule. The use of delegation should also be avoided. The author was once involved in a peculiar experience where the employer insisted on using joint committees for negotiations. Under this arrangement, several joint committees worked on several issues each, and then reported back to their main negotiating teams. Few experiences have been encountered which were as exasperating and frustrating as that experience. Such fractionalized negotiations resulted in numerous disputes, misinformation, unauthorized concessions, and a lengthy impasse.

It should be kept in mind that rumors are sometimes intentionally circulated to cause the opposing party to take action based upon false information. To the extent possible, all such rumors should be investigated to verify their authenticity or lack thereof. For example, the union might send out a "leak" that it will settle for a certain salary, with the hope that such misinformation will cause management to make another, but higher, salary offer. Surprisingly, such tactics do work rather frequently.

22. Talking—not listening

If negotiations are to be successful, each party must understand the other's position and the rationale for that position. Such understanding can come about only if each party listens carefully to the other. And frankly, all other factors being equal, the party which listens more than it talks usually has the advantage. After all, people who talk are giving away information free; and with proper probing, patience, and encouragement, a talker can be manipulated into revealing information very helpful to the listener.

Such listening need not be confined to the bargaining table. On any number of occasions, valuable information will be divulged by union team members who talk with

members of the management team. In several instances, the author has asked certain supervisors to initiate casual discussions with employees in order to get a direct reading from the ranks. Such information can be helpful in evaluating information which comes directly from the union spokesperson. For suggestions on how to listen, refer to Chapter VIII in this book.

23. Assuming omniscience

Each negotiator should prepare thoroughly for each negotiating session in order to gain superior knowledge regarding the matters to be negotiated. But even though the negotiator may have prepared thoroughly, he should not assume that he knows everything there is to know about all topics under consideration. If that were the case, there would be no need for negotiations since negotiations assumes that each party learns from the other, and that through that learning process each party is moved to change its position to grounds of mutual agreement.

For example, in a mid-western district, a union representing maintenance workers and custodians asked to have at least one dolly of a special type placed at each work site. On the surface, the proposal seemed frivolous; however, explanation by the union revealed that the absence of the requested dollies slowed down work and caused workers periodically to strain back muscles, resulting in a few cases of workmen's compensation disability leave, which the employer had to pay. In investigating the matter with the personnel director, the union's statement turned out to be correct. The personnel director computed that if only one case of workmen's compensation could be headed off by avoiding back strains, enough money would be saved to place one dolly at each major work site. As a result, management agreed to purchase the dollies, the union was happy, management got a concession from the union, workers avoided back strain, and the

employer saved money. Had the chief negotiator not listened to the union because he felt he knew it all, such progress would not have been made.

24. Accepting the opponent's deadlines

Much human progress would cease if there were no deadlines. Deadlines are points in time by which time certain events must take place. The role of deadlines in negotiations is ever present. There is a deadline to begin negotiations. There is a deadline for budget adoption. There is a deadline for impasse. There is a deadline when the labor contract expires. All of these deadlines force negotiations to keep moving toward an agreement. In that respect, deadlines are good.

Not all deadlines, however, are a normal part of negotiations. Some deadlines are imposed by one party or the other to force a wanted compromise. But like a threat, the person imposing the deadline would probably prefer not to enforce it since an imposed deadline often places risks on the party that set the deadline.

By way of illustration, when a union demands a concession by a certain deadline, it implies that something will take place harmful to management (e.g., an employee rally) if that deadline passes and management has not taken the action sought by the union. The union, however, would likely prefer not to have the rally (if it could get the right concession from management), because the mass rally might not produce the desired results. As a matter of fact, the rally might be counterproductive.

Acquiescence to an imposed deadline is a form of compromise, and, as such, the party acquiescing has a right to expect some quid pro quo. Otherwise, the party which imposes the deadline is led to believe that it can get away with such tactics.

25. Refusal to accept a reasonable offer

One valuable skill in negotiations is the ability to accept reasonable offers in exchange for something wanted. By allowing a reasonable offer to go begging, a needed

opportunity is missed to take one step closer to a contract. Should such a reasonable offer still be unresolved during an impasse, it could be used to make the employer look irresponsible, particularly if the rejected offer receives the attention of the governing body or the media. Also, the refusal to accept a proposal which is patently reasonable harms the credibility of the negotiator. As stated before, a negotiator with high credibility can obtain more concessions from his counterpart than he could if he were untrustworthy.

26. Reneging

Labor contracts are arrived at through the methodic accumulation of a series of tentative agreements. Although these tentative agreements officially are neither final nor binding until the entire contract is agreed to, there is present an implicit de facto presumption of finality. For example, if a management negotiator agrees to add one day of sick leave per year to the sick leave benefits of employees with the understanding that other leave benefits will remain the same, then the union has a right to assume that sick leave will be increased accordingly--if a contract is ratified. Should the management negotiator attempt to withdraw his offer later on in negotiations, even though it was not final, that would be reneging, a tactic which never profits and should not be used except under unusual circumstances.

The appearance of reneging takes place when a negotiator agrees to an offer with the understanding that agreement is reached on all other unresolved items. The opposing party interprets this to mean that the issue is resolved and will be a part of the contract as soon as it is finalized. Should the maker of the offer attempt to withdraw the offer before negotiations conclude, there would be the impression of reneging. This tactic, too, should seldom be employed.

Reneging can also take place when after the contract is in force there is a blatant refusal by either party to honor one or more of the terms of the contract. Fortunately, however, there are standard procedures available to correct such improper behavior. If management is the erring party, the union can lodge a grievance. If the union or the employees are the erring party, then management can take disciplinary action, or some other unilateral action, or seek enforcement by a third party such as a state agency or a court with appropriate jurisdiction.

27. Sheer posturing

Some negotiators view negotiations as a singular process of each party trying to divide the difference (not necessarily split the difference) between the parties on each issue. In order to do this the parties take positions which are clearly insincere or blatantly unreasonable. By way of example, a union asks for a 30 percent increase in salary (recognizing it will be lucky to get 6 percent or 7 percent), and the employer proposes a reduction in the workforce and a freeze on all salaries (when, in fact, the employer would settle for no layoffs and a 5 percent or 6 percent salary increase). This is called **sheer posturing,** and is a tactic used by novices. In this example, any person knowledgeable of the true situation would recognize that both parties are playing games with each other.

There are several drawbacks to sheer posturing:

(a) Once the parties have postured in their extreme positions, it is difficult to move from those positions without losing credibility.

(b) Each party is hesitant to make the first move toward reality.

(c) Such extreme behavior may attract the attention of the media, making withdrawal more difficult.

(d) The rank and file employees may actually begin to believe that they deserve a 30 percent increase and begin to expect an increase much higher than will be delivered. As a result, the union finds it more difficult to sell reasonable compromises.

(e) The management offer to freeze salaries will drive the employees deeper into their union camp.

Responsible posturing is a necessary part of all negotiations, and each skillful negotiator knows how to posture. But each posture taken should be one which is defensible on some moral, economic, political, or practical basis. Posturing should not be used as a blunt weapon in negotiations, but should be used as an intricate device of persuasion.

28. Prefixed attitudes

As described in great detail in the book Negotiations Strategies, each negotiator should have overall goals and objectives for negotiations, supported by a carefully developed strategy. However, one should not be so rigid in this plan that it does not allow for deviation when there is justification. The whole purpose of negotiations is to provide a process whereby each party influences the other to change its position. If both parties have already made up their minds as to what they will do and will not do, the only way an agreement will be reached is if by some incredible coincidence the parties have the same goals and objectives in mind.

Since a prefixed position is a bad tactic in labor negotiations, the wise negotiator seeks as little specific direction as possible from his employer. The author remembers one situation where the employer designated a subcommittee to supervise his work. The subcommittee had prefixed ideas of what was acceptable and tried to dictate exactly what should be done on each issue and how it should be done. The author was turned into an errand boy, and as a result, gained little credibility with the union. As a result, the

author resigned in the midst of negotiations; the union began to negotiate directly with the management subcommittee; there was a bitter strike; and management capitulated under pressure on the major issues. Frankly, they got what they deserved. Unfortunately, however, those politicians have gone on to other ego trips and the taxpayers are still paying the price for the mistake made by those persons.

29. Not recognizing "their" problem as your problem

Although some union proposals may be frivolous and contain sheer posturing, most union proposals are a sincere attempt by the union to present suggestions to improve the benefits and working conditions of employees and thereby create a more productive workforce. When these proposals are received, it is the negotiator's job to separate the frivolous from the sincere and find mutually agreeable solutions to the problems which the union has revealed.

An enlightened employer cares about the welfare of its employees, because that is only humane. But even if the employer is not humane, it should recognize that the employment force represents an important "capital" investment. Every employee who leaves is a loss to the employer. Every employee who is disgruntled with employment conditions is an inefficient worker. Therefore, the employer is obligated, at least on an economic basis, to care for its employees. Consequently, each union proposal should be addressed seriously and a real effort should be made to understand the underlying problem that each proposal represents. When the problem is understood, the negotiator should then frame a response which recognizes the problem, but offers a solution (or partial solution) which management finds acceptable.

The attitude described above will not only find solutions to the employees' problems, but it will set an example for the union to help management find solutions to its problems.

Such a cooperative relationship should be the ultimate goal of all unions and of all employers.

30. Going public

Whereas much collective bargaining in the private sector is a private matter between a private employer and private employees, and therefore is best conducted in private, collective bargaining in the public sector is a public matter between a public employer and public employees, but it, too, is best conducted in private, because public sector bargaining is everybody's business, hence it is nobody's business except the duly selected representatives of the public and the public employees. When labor negotiations in government go public, confusion reigns. Every busybody, crank, cub reporter, and amateur politician comes out of the woodwork. Every special interest group sharpens its axe. As a result, negotiations are always hampered and often destroyed, creating lingering labor relations problems. Consequently, every effort should be made to keep everybody out of negotiations except the duly designated officials.

Sometimes when negotiations reach an official impasse, and always when there is a strike, there is much public fanfare. In that case the parties become locked in a struggle over who shall gain the support of "the public." But the winning of that struggle is more dependent upon public relations skills than upon collective bargaining skills. Until negotiations are officially over, then, negotiations should be kept private.

31. Giving EVERY reason for a response

Good faith bargaining requires that both parties explain the reasons for their proposals and the reasons for rejecting proposals. Failure to explain positions makes it difficult for the other party to construct a response which hopefully will lead to an agreement. However, there is no rule that requires that a rejection of a proposal must be

accompanied by **every** reason for the rejection. Withholding information is neither illegal, unethical, nor dishonest.

There is a rule in negotiations which states: "Use the least amount of persuasion possible to accomplish your goal." In other words, if only one reason will convince the opponent to accept your position, then give only one reason. If there are more reasons, save them in case they are needed later, or withhold them to be used on other issues. For example, the carrying out of many union proposals would require unsound administrative practices, but it would not be wise to state with each rejection of each proposal that the proposal is rejected because it is "administratively unsound." After hearing that reason several times, the union understandably could become quite irritated. Therefore, the reasons for positions and rejections of positions should be mixed and varied, with some reasons being withheld as a backup.

32. Watch for these misconceptions

In the book Negotiations Strategies the author discusses in detail 24 of the worst errors one can make in negotiations. Some of these errors are caused by inexperience, while others are caused by **misconceptions** about labor negotiations. Following are the common misconceptions that can cause problems at the bargaining table.

(a) **The most important issue is always wages.** It is true that wages and other cost items are frequently the last issues to be negotiated, but they are not necessarily always the most important issue. To fail to recognize that other issues may be more important to the union (or to the employer) can result in poor use of the quid pro quo process and delay negotiations unnecessarily. There are many other issues which potentially can be more important than an additional percentage increase in salaries. For example, binding arbitration of grievances, automatic dues checkoff, job security, and employee discipline can all be matters of more importance than compensation. Through careful probing and

listening and through the general process of negotiations, a perceptive negotiator will find out what are the most important issues.

(b) **All of the angels are on one side of the table.** It is a mistake for either the union or management to assume that all virtue and righteousness is on its side of the bargaining table. The only condition which is "right" in negotiations is what is agreed to between the parties. The union should not view its role as the great savior of the harrassed, overworked, and downtrodden working masses. Similarly, management should not view itself to be the great benefactor for its employees and the great defender of the public good against lazy public servants trying to feed at the public trough. Like it or not, collective bargaining exists in the public sector, and both parties possess certain rights under the applicable bargaining law. Correspondingly, each party should deal with the other with respect and as an equal. To impugn to the opponent malevolent motives is to create problems where problems don't exist and to invite retaliation.

(c) **"Split-the-difference" is always an offer hard to refuse.** Somehow, some persons unfamiliar with negotiations seem to think that an offer to split the difference is very good faith, in that it is an offer to reach out half way. Well, that may be a good tactic for the party which has postured excessively, but it is hardly an attractive offer for the other party. For example, a union initially asks for a 30 percent salary increase, when all other settlements are running about 8 percent. Management offers a 5 percent increase, and the union responds with an offer to split the difference and settle for 12.5 percent. Not only should such an offer be refused, but management might consider a similar response and offer to split the difference and settle at 8.75 percent. The trouble with that response, however, is that the union might come back with another split-the-difference counterproposal to settle at 10.63 percent, which might be higher than management wanted to pay and higher than the union expected to receive. So, you see, the split-the-difference game often does not work generally.

(d) Tactics that were successful in the past will work in the future. In the book Bargaining Tactics, the author cautions negotiators to vary their style, strategies, and tactics from year-to-year, especially if they face the same negotiators year in and year out. All negotiations techniques should be tailor-made to the situation at hand. Just because one approach worked in one situation is no assurance that the same approach will work with the next year's negotiations.

(e) The most "powerful" side wins. There is a general belief among some uninitiates that negotiations are won by power. If power, then, is the overriding factor in winning negotiations, why bother to negotiate? Why not issue an ultimatum? If the ultimatum is not accepted, then use whatever power is necessary to gain the objective.

Assuming that good faith exists on both sides of the table, all decisions should be made upon reason, cooperation, and compromise. Once threats of the use of power are introduced, the relationship between the parties is changed for the worse.

Power is not an easy concept to define, as it applies to negotiations. There are many forms of power and many dimensions to power. For those who would like a fuller discussion of this topic, read Chapter 18 of Negotiations Strategies.

(f) Reasonable offers head off strife. There are members of governing bodies, citizen activists, and government administrators who seem to believe that if you are reasonable the union will agree with you and cooperate with you. Although reasonableness is a virtue in most labor negotiations, it is no guarantee of peace and harmony. There are times when other strategies must be employed to protect the integrity of the government agency. In the advanced stages of deterioration in labor relations, the employer must be willing to back up its reasonableness with power and the willingness to use power. This advice does not contradict the points made above in section (e). Power should be reserved generally as the last resort, when other more reasonable actions have failed.

(g) Never reveal your final position to the other side. It is true that the skillful negotiator always tries to save something for the mediator, and that ultimatums to accept a final offer should be used sparingly. Nevertheless, there are often occasions when the negotiator should reveal his final position to his opponent. The real question is not whether a final position should be revealed, but how it is revealed and under what circumstances. If the negotiator has high credibility and his final offer is reasonable, he may want to reveal it. In a few cases, where the right relationship exists between the two negotiators, a final position might be revealed in a private discussion. But, as discussed elsewhere in this book, "one-on-one" understandings should be entered into with considerable caution.

(h) A skilled negotiator can win more easily with an unskilled negotiator. Some of the most frustrating experiences encountered by the author have been in dealing with inexperienced negotiators, especially those who believe that every demand placed on the table must be agreed to. Although there are exceptions to every rule, negotiations usually work best for both parties when two experienced negotiators are working together.

(i) Any reasonable demand should be accepted quickly. Elsewhere in this book the reader is advised not to accept first offers. The same advice applies even when an offer is very reasonable, even though it may not be a first offer. Naturally, a reasonable offer should be taken seriously, but it should be considered along with all other issues on the table and put into a package for a productive quid pro quo.

(j) Marathon sessions are necessary. Most of what the public knows about labor negotiations is based upon information from the media, and the media has a distinct tendency to report only the extraordinary. Media reports on labor negotiations seldom cover the many routine meetings which are held between labor and management. Invariably, the press gives coverage only when negotiations have reached a crisis, and during a crisis marathon meetings are not uncommon. As a general rule, however,

marathon meetings are not necessary and they should be avoided. They are stressful and create unnecessary risks for making mistakes. If a management negotiator finds himself in a marathon meeting, it should be because there was no other choice.

(k) **All good negotiators are tough, abrasive, and deceptive.** Untrue! Good negotiators are firm, tactful, and honest. Additionally, they are trustworthy, patient, articulate, placid, thoughtful, openminded, friendly, confident, ethical, trusting, disciplined, fair, perceptive, innovative, cooperative, diligent, composed, sociable, humorous, flexible, and analytical.

CHAPTER V

GOOD TACTICS

The book Bargaining Tactics contains approximately 300 techniques which have been tested by the author under a variety of bargaining conditions. The book Negotiations Strategies contains approximately 200 additional tactics which are grouped under major strategies. Since the publication of those two books, the author has assembled from his notes and new experiences additional tactics which are very practical and easy to apply. None of these tactics are theoretical. They can be used successfully by anyone who wishes to become an effective negotiator. Although some of them may appear to be similar to tactics included in the two books mentioned above, all of the following tactics are different from those covered in the two previous books. But before we discuss specific good tactics, let's talk about a master strategy without which all of of the best tactics are rendered useless. Let's talk about . . .

The Super Tactic, which is to Seize the Initiative

A fundamental rule for "winning" negotiations is to take the first step in negotiations to fulfill a predetermined plan. In other words, the negotiator should seize the initiative. In order to seize the initiative in negotiations, one must be able to originate new ideas and act and think without being urged to do so. Initiative is enterprise, and initiative is leadership. Seizing the initiative means establishing goals for negotiations and setting about to follow steps which lead to the attainment of those goals. Without goals, there can be no useful initiative. If the negotiator does not know where he is going, he is at the mercy of the actions of others. Elsewhere in this book, as well as in other

books by the author, the goals of labor negotiations from a management point of view are thoroughly discussed. Once the goals for negotiations have been set, there are a number of techniques that can be employed to seize the initiative.

1. Conduct thorough research

In negotiations knowledge is power, and power is knowledge. The person who knows the most about a subject under discussion is most likely to "win" the day. Therefore, the chief negotiator should set about to know more about everything related to every item under negotiations than anybody else associated with the agency. In other words, the chief negotiator should set about to be the expert numero uno on everything that happens in collective bargaining. This means that he must conduct considerable research and perform vast amounts of homework in order to achieve this distinction. He need not undertake all this effort by himself, however, since there are other team members to call upon and other staff members available to help. As a matter of fact, the chief negotiator should make it a practice to delegate research to other team members, one reason being the negotiator does not have the time to do everything himself. Second, the other members of the negotiating team need to be involved; otherwise, they will not be supportive members.

2. Know the employees

Some managers are so out of touch with the work of rank and file employees that they believe everything the union says, or they believe nothing the union says. More often than not, however, a union will exaggerate what the employees expect and what they will settle for. Knowing in advance what the employees will actually settle for is a powerful weapon. Not only does such knowledge give realistic parameters within which to search for a settlement, but such knowledge is signaled to the union, causing the union to become more realistic in its actions at the bargaining table.

The best use of this tactic was practiced by Lemuel R. Boulware, who was Vice President of Labor Relations for General Electric for 14 years prior to his retirement in 1961. Mr. Boulware's belief was that if a company knew what the employees wanted and needed, and if the company knew what it could afford, there was limited need for the collective bargaining process. Or, as stated by the author, "Boulwarism was General Electric's program of trying not only to do right voluntarily in the balanced-best-interests of all concerned but also to make sure that all those affected so understood."[1] Although this approach to collective bargaining in the private sector has been practiced to varying degrees in the years since, it is an approach which often offends unions and may run counter to some "good faith" bargaining requirements of some state bargaining laws.

3. Show the advantage of your position

In order to keep the initiative in negotiations, once it is seized, the negotiator must be prepared to defend it. This means that he must constantly attempt to show the opponent the advantage of accepting the proffered position. This technique requires persuasive ability, credibility, and persistence, because most unions become somewhat wedded to any proposal which is put in writing and placed on the bargaining table. The success of the technique is often dependent upon showing the union that its proposal, if accepted, might result in a short-term gain, but likely would result in a long-term loss. Or, management may need to show that in order to give on one union proposal there must be something given up on another.

4. Remove distractions

From the time that negotiations begin until an agreement is reached, the chief negotiator must have the necessary time and energy to perform his job as negotiator.

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[1]Lemuel R. Boulware, The Truth About Boulwarism (Bureau of National Affairs, 1969), p. ix.

This means that during this period of time the chief executive should make every effort to relieve the negotiator of duties which might interfere with his full attention to negotiations. A negotiator cannot keep the initiative in negotiations if he does not have sufficient time, energy, or the inclination to keep at least one step ahead of the other team.

Personally, the negotiator should make whatever adjustments are necessary in his personal life in order to assure that there will be minimal stress on his emotions and minimal demands on his time. The process of achieving a sound labor contract is just too important to have lesser tasks take priority.

5. Maintain a united front

If a negotiator is to carry out the strategy which leads toward the accomplishment of the goals set for bargaining, he must have the full support of those who could make a difference. This means, specifically, that the negotiator must have the understanding and support of the chief executive and the governing body. It also means that these persons must understand the consequences of carrying out a strategy to achieve the stated goals. If labor strife is a possibility during the course of negotiations, then the decision makers ought to be alerted in advance. Furthermore, the members of the negotiating team should clearly understand and accept the fact that they are expected to serve the chief spokesman. There are enough problems in negotiations without being forced to deal with recalcitrant team members. Once the decision makers have agreed on their goals and understand the consequences of the strategy plan, the negotiator is well on his way to "winning" the negotiations game.

6. Establish a time frame

In order for negotiations to be successful, there must be a beginning and there must be an end. The beginning should be far enough in advance of the budget adoption deadline

to allow for a reasonable period of negotiations, plus an additional period of time in the event that there is an impasse. The end of negotiations should be prior to budget adoption. In between those two dates a number of meetings should be agreed to which are sufficient to carry out all necessary negotiations. Additionally, each meeting should be of a duration which allows for reasonable examination of issues. Naturally, the actual number of meetings and the duration of those meetings is up to the two parties. However, management should be advised that too much time can be spent on negotiations. Any amount of time beyond what is reasonably needed to fully discuss issues is likely to be counter productive.

By setting such a calendar for negotiations, the negotiator can monitor progress toward his goals. If he begins to fall behind, adjustments can be made in the schedule of meetings or the amount of time devoted to research outside of the meetings. In any case, the following of a predetermined schedule is one more important ingredient of keeping the initiative.

7. Have options

When negotiations change from softball to hardball, tactics based upon power may need to be employed. The ultimate power play is the exercise of options. Options mean leverage, as discussed earlier. When a union refuses to accept a reasonable contract or begins to threaten the use of its power, it may be time for management to begin to deal out its options. Layoffs, contracting out, the use of strike breakers, dismissals, automation, and shutdowns are all power options available to the employer. Once the union recognizes that the employer will prevail with or without the union, a contract is usually just around the corner. After all, the union has a life all of its own and it does not want to lose it. Specifically, that means that given the choice of going out of business or accepting a contract of less than hoped for, the union will choose the latter.

Other Good Tactics

Now that we understand that seizing and keeping the initiative is the underlying strategy for success in negotiations, let's examine some other valuable tactics, all of which have been used with success by the author.

1. Transfer the burden

Collective bargaining in the public sector is essentially a process whereby an exclusive representative of all employees within a given bargaining unit proposes changes (improvements) in the compensation, benefits, and working conditions of those within the bargaining unit. Management is required to respond to these proposals, following certain "good faith" practices which, hopefully, result in a labor contract. When viewed from this perspective, collective bargaining is a one-way process. The union demands a list of benefits, and the only question is what portion of that list will be granted by management. Only until very recently, under austerity conditions in some situations, have employees actually lost anything in labor negotiations.

Some negotiators have been reasonably successful in taking a reactive role in negotiations. This strategy generally means that the employer rejects union demands, giving reasons for the rejection and then leaves it up to the union to offer counter-proposals to its own proposals. Although it is an approach used by the author in a few instances, and although the method is appropriate for some situations, some unions will not tolerate this approach to negotiations. They will claim that it is bad faith, or even harassment. Should such be the union's reaction, the negotiator must be the judge of whether to continue the strategy.

2. **"I don't understand"**

Information is the most important ingredient in negotiations. Information is power (as discussed elsewhere in this book). There are various ways to obtain information at the bargaining table. One way is to ask questions, but questions, unless presented properly, can create suspicion. A less direct way to obtain information is to feign ignorance by saying: "I don't understand." Such a statement usually encourages a speaker to reveal all that he knows. The more the speaker talks, the more he reveals the real reasons for his position. Should the opposing negotiator retort with, "What is it you don't understand?" respond with, "I don't understand the basic point you're trying to make," or, "I don't understand why you are proposing this."

For example, a union might propose a "past practice" clause or a "maintenance of standards" clause. Even though the management negotiator may be thoroughly familiar with such clauses and the reasons for such clauses, he might ask: "I don't understand. What is this clause? Why do you want it?" The answer may reveal that the union is concerned with protecting only one benefit or working condition. In which case, it may be possible to include that item in the contract and avoid an all-inclusive clause which incorporates conditions and terms unknown and unidentified at the time of negotiations.

3. Convey perceived rank

Successful negotiations is dependent upon a negotiator possessing all necessary authority to enter into tentative agreements, which the opposing party has every right to believe will be approved by the governing body. But, although it may be accepted by a union that the management negotiator is clothed in all necessary authority to represent the employer, the image of the management negotiator can be enhanced by employing certain techniques. For example, the title of the negotiator should imply as much rank as the employer can approve. For example, the title "Director of Labor Relations" is

preferable to "Employee Relations Technician." Additionally, team members should make it clear that they defer to their chief negotiator. Under no conditions (other than rehearsed) should a team member indicate anything but total support for his team leader. The chief negotiator can enhance the perception of his rank by referring to the Chief Executive, the Superintendent, or the Chairperson of the governing body through the use of first names. In other words, the chief spokesman should undertake to lead the union to believe that he works at the highest echelon of management and is an accepted member of the inner sanctum of management. It is imperative that the union believe that the opposing negotiator is a force to be reckoned with and not just an errand boy. This image can be strengthened by arranging for the chief executive or chairperson of the governing body to demonstrate in some way support for the spokes person. Remember this one caveat, however. Under a few state bargaining laws it would be inappropriate for the governing body to take an adversary role during negotiations.

4. <u>The paper pile</u>

There are times that a negotiator needs to put his hands on information immediately, and there are times that he may want to delay finding certain information. In either case, the negotiator should convey to the opposing team that he is in possession of vast amounts of information. One way to achieve this impression is to bring to all negotiating meetings various and sundry documents, such as agency policies, regulations, and budgets. This gives the impression that the negotiator is the keeper of the agency's treasures. Furthermore, it allows the negotiator to refer to helpful information when he knows it is in his "paper pile," and to "lose" unwanted information when it is not wanted. Or, the negotiator can pretend that documentation exists for his position by stating, "I know I have the proof someplace here, but I can't find it right now." Finally, a paper pile

with worthwhile information in it expedites negotiations and helps convince the opposing team that you are not to be taken lightly.

5. Timely disclosures

An essential element in negotiations of any type, whether in diplomacy, commerce, or labor relations, is timing. Timing is the regulation of the speed or of the moment of occurrence of something so as to produce the most effective results. It is a skill which is more intuitive than learned. Even so, any negotiator can learn something about timing. For example, the most fundamental rule in timing is: Reserve your best offer until last. Another rule is: Reserve your closing offer until the opponent is ready to close. An additional basic rule is: Play one card at a time. That means release concessions gradually.

In considering timing in negotiations, keep in mind that the mere passage of time has an impact on negotiations. The more time that passes with few compromises than expected by the union, the lower becomes the expectation by the union that management will make the wanted concessions. Also, the passage of time leads toward the expiration of the current contract. A salary offer in October of 7 percent might be laughed at, but that same offer in March on the eve of budget adoption might be gratefully accepted.

6. The innovative solution

A mother had prepared an apple pie that was the favorite of her two young boys, except there was only one piece left. Neither boy trusted the other to cut the pie and neither trusted the mother to divide the pie into two equal pieces. The mother thought for a moment and said: "John, you cut the pie in two equal pieces, and David, you have first choice as to which piece of pie you want." Granted, not all negotiations problems can be resolved so easily, but frequently a novel answer can be found.

A number of government agencies are finding that they now have a large number of older employees who have seniority over younger employees and who are receiving the highest salaries. Given the economic circumstances of the 1980s, such a combination of circumstances would appear to create an unsolvable problem. However, in increasing numbers, public agencies have been finding innovative early retirement plans which save expenditures for the agency and provide the older employees with an opportunity to retire early. True, early retirement does cost money to save money, and the older employees do not receive as much money as they would have received if they remained on the job. Nevertheless, where employees want such a plan, both the employer and the employee benefit.

An innovation is a new method or way of doing things. Innovation is a way of doing something better than the conventional way. Sometimes in negotiations we are so restrained in our thinking that we fail to see the obvious solution to a problem, simply because it is unorthodox.

7. Garbage or treasure?

What is valuable to one person may be of limited value to another. We have all been to a rummage sale, a yard sale, or a garage sale where the seller was willing to dispose of items far below a price that the buyer was willing to pay. A set of weights in mint condition may be of little use to the parents of children who have long ago fled the nest, but to the young teenage boy down the street the weights might be very attractive buys. The same is true in labor negotiations when the union desperately wants something that management places little value on.

The author remembers an experience where the union requested that it be sent an advance copy of the document, issued two days before the meeting of the governing body, which described briefly what business was intended for transaction. The request was

rejected several times, but each time the union came back asking again to receive the document. After several requests and several repeated rejections, it became increasingly apparent that this was an important item for the union. Although the union did not know it, management routinely sent the document to many persons and organizations, and management was willing to do the same for the union--for nothing, initially. Near the end of negotiations the union's request was still on the table. It was matched with some items that management wanted, and a trade was made that made both parties happy. Truly, one man's garbage may well be another man's treasure.

8. The weight of status quo

We've all heard of squatters' rights and that possession is 90 percent of ownership. both of these common laws indicate the weight of status quo, which means the existing state of affairs. As applied to labor negotiations, it means that past and existing practices contain legitimacy, because they do exist. Either the union or management may try to invoke the status quo to gain an advantage. On the one hand, management may reject a union proposal, because it is contrary to status quo. On the other hand, the union may insist that a certain condition be included in the labor contract, because it reflects the status quo.

For example, a union might demand that a dinner allowance be included in the labor contract, because such an allowance has been a continuous practice for some years for employees who are required to work through their dinner hour. In this case, the union stresses the status quo as the reason for including the benefit in the contract. On the other hand, if the union were to propose that certain employees be given clean-up time, management might respond by reminding the union that employees have never been granted agency time for wash-up. In other words, management might claim that the union request is contrary to the status quo and should therefore be denied.

Surprisingly, the statement, "I'm sorry. It's policy," carries considerable weight. Somehow, even the union seems to accord legitimacy to agency policies, as if they were sacrosanct. In a way, the fact that a topic is covered by policy seems to remove it from the realm of negotiations in many instances.

9. Accentuate the positive; eliminate the negative

Some inexperienced negotiators for management assume a reactionary role in that when they receive the union demands most of the time at the table is spent explaining why certain demands must be rejected. This is not the best approach. Naturally, many demands will be unacceptable, at least in the state they are initially presented. But as stated earlier, as little attention as possible should be given to items which are unacceptable. The least amount of debate possible should be used to obtain the withdrawal of an item (or the acceptance of an item in the case of a management proposal). The debate on an unacceptable item should be expanded only to the point that a resolution is achieved or until the debate becomes counter productive. The first response to unacceptable items should be to ignore them. If that does not work, then simply say, "Any item not referred to is unacceptable." This approach restricts the use of offensive rejections to only once. If a "no" were given to every objectionable proposal, the union would be forced to retaliate in some way.

With the items on the table that have some hope of resolution, management should stress the positive side of its counterproposal. In other words, management should generally try to show why its proposals are good for the employees, particularly in the long run. For example, let us suppose that a teacher union has proposed that faculty members be allowed to leave their school buildings for personal business during any time that they are not actually teaching in the classroom. This proposal as presented is unacceptable to principals for several reasons. Therefore, the proposal is restructured to

allow teachers to leave the building during their lunch hour, with prior approval, for personal business which otherwise could not reasonably have been taken care of outside of working hours. In response to the union's proposal, the chief negotiator for the school board would first show why the union proposal would not be good for teachers. (Community members would resent teachers being allowed to leave their posts when children are still in the school.) Then the negotiator proceeds to explain why his counter-proposal is better for teachers, at least in the long run.

10. Get all the reasons

Even though most of the onus for an agreement should be on the union, management cannot usually take a totally reactionary position. Often management must work hard to get the union to accept a management counterproposal to a union proposal. One technique to achieve acceptance is to ask the union to give its reasons for rejecting the management counterproposal. After the reasons are given and understood by both parties, the management negotiator asks: "Any other objections?" The purpose of this question is to assure that all reasons for the rejection have been stated. At that point management either requests a caucus, recesses the meeting, or moves on to other issues. In any case, management analyzes the union's reasons and sets about to rebut each reason given. If each reason can be convincingly rebutted, the union has no choice but to accept management's counterproposal.

11. Why should I deal with you?

In one particularly difficult situation in the Midwest, time was running out for negotiations, and I was running out of patience. I felt that negotiations must be brought to a close since progress was turning to regress. I had personal pressures on me and the governing body was becoming ill-tempered. I took a risk. I told the union that we had until 12:00 Noon on Saturday to reach an agreement; otherwise, I planned to terminate

negotiations and fly East in order to join my family at the beach as I had promised. I recapitulated the progress that had been made to date, and asked the union team members if they really wanted to deal with someone else; namely, the governing body, which wanted to fire everybody. I gave the union team members a total written contract ready for signature and told them I would be back at 9:00 A.M. on the next day, Saturday, and that I would depart promptly at 12:00 Noon with or without a contract.

I arrived late, at 9:15 A.M., with my bags in my hand and a plane ticket clearly in view in my breast pocket. I apologized for my tardiness by explaining that the motel was slow in checking me out. The union began to make a number of counter offers, and I interrupted, by saying, "Apparently you did not understand that the contract is to be accepted as is." The union caucused for an hour and returned at 10:30 A.M. and asked that a few minor changes be made. Our team caucused for thirty minutes and returned at 11:00 A.M. with a slightly modified final offer, about which the union had some questions. At 11:30 A.M. the union said it wanted to caucus. I said: "Go ahead, but I'm leaving for good right now." The union members looked at each other. Two members gave an imperceptible nod; one gave a slight shrug, and one looked askance. The union negotiator looked at me with a totally nondescript expression, paused until the silence was painful, and said, "We . . . (pause) . . . accept." To this day, I am convinced that the union decided, "We would rather deal with Neal."

12. <u>The intentional leak</u>

To the extent possible, negotiations should be carried out in a businesslike manner free of indecorous behavior. Therefore, unpleasant responses and threatening information should be minimized. One way to communicate unpleasant information which is needed for leverage, without introducing the information into the bargaining process, is to arrange for a "leak." For example, if management knows in advance that it cannot pay

the salary demand which the union will finally hold to, management might undertake a "confidential" study of a reduction-in-force (RIF). In the midst of negotiations, the union hears rumors of an intended layoff. Invariably, the impact is to soften the union's position, particularly if the criteria for layoffs includes factors other than seniority.

13. Assess the opponent

In the book Countering Strikes and Militancy in School and Government Services, by Richard Neal and Craig Johnston,[2] an entire chapter is devoted to assessing the power balance of the union and its members. By answering the following questions about the union, management can estimate the power of the union should there be, unfortunately, a showdown:

- Does the union have a strike fund? If so, how large is it? How much is available to each striker? Is the fund supplemented by outside sources?
- Is there employment strikers can find during a strike?
- What type of insurance coverage will employees lose if they strike?
- How much control does the union have over its members?
- Is the union facing an election?
- Is the union involved in any disputes which might distract it?
- How much do employees need their jobs?

The suggestion to assess the strength of the union does not necessarily suggest that management's concessions should be based on what it can get away with. Compromises should be made on the basis of what is proper and what is mutually agreeable. Even so, it is wise to know the strength of one's opponent in any adversary process.

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[2]Richard Neal Associates, School and Government Labor Relations, 1982, Ch. XIII, "Assessing the Power Balance."

The assessment of the opponent should also include the members of the union team. Answers to questions such as those which follow should be sought: Who are the team members? What do they do on the job? What are their strengths, interests, weaknesses, etc.? What is the style of the chief negotiator? What direction is the team under? How expert are they? Do they have the backing of their members?

14. Get the union to support your premise

Ideally, the labor contract should result in a better deal for both parties. Seldom is that the case, however. Usually the labor contract results in a deal better for the employees and a worse deal for the employer. Granted, management may improve its lot outside of the negotiations process, but that is no benefit from the labor contract. About the only gain that management may obtain from the labor contract is "labor peace." But why shouldn't an employer be entitled to such peace anyway? It appears that bargaining laws are based upon the premise that if an employer does not agree with a union, then that employer deserves to incur the animosity of the union and its members. This is an unfortunate attitude in the long run for the employee and the employer, as well as the general welfare of the nation.

One way to make bargaining pay off for management is to insist that each union demand must be accompanied by either a concession or support for a changed condition which ideally improves overall productivity and minimally does not harm productivity. Basically, what this means is that both parties must agree to the premise that labor negotiations should result in a more productive agency. Specifically, it usually means that the labor contract should require more work from the workforce. Whether this means heavier work loads for employees or support from the employees for layoffs or introduction of labor-saving automation, depends on the situation.

As a specific example, however, a city might agree to a 10 percent salary increase for sanitation workers, if they would agree to reduce the size of their crews assigned to each truck, or agree to use a "mother loader," a type of trailer which is attached to the regular truck, allowing increased loads to be carried, and reducing the number of times that the truck must return to the incinerator or dump to dispose of its load. Or, management might agree to allow workers to complete their day when the trash is collected, if they agree to a heavier work load. The payoff here is that employees will find a way to do more work in less time. As a result, the workers get to go home early and the city gets more work done.

15. Identify the hidden agenda

The real issues in labor negotiations are sometimes not those which appear on the surface. This is not to suggest that the issues of compensation, insurance benefits, rest periods, and other similar "bread and butter" issues are not usually important to employees and their unions. It is being suggested here, however, that many other issues, unrelated to the specific scope of bargaining, can be serious matters with which to contend. For example, here are some issues which frequently arise in labor relations which complicate the bargaining process:

- The union wishes to undermine the employer's negotiator.
- The employer engages in "union busting."
- The union wants a cause celebre around which to rally the members.
- The union attempts to establish ties with members of the governing body.
- The union negotiator sets out to make a reputation for himself.
- A competing union is vying for representation rights.
- An election is coming up and negotiations and politics become mixed.

- The governing body wants to get rid of its chief executive and uses conflicts with the union as an excuse.
- The union is experiencing internal strife.
- Local politicians want to get into the limelight of negotiations for political gain.
- Several members of the governing body are due to be replaced prior to the conclusion of negotiations.
- Changes in the applicable bargaining law are undergoing serious possibility of changes.

The actual negotiations which take place at the bargaining table are only one part of a total labor relations program. In order to have an effective labor relations program one must remember that many challenges must be faced simultaneously. The book School and Government Labor Relations, by the author, has a thorough chapter on the subject of a complete labor relations program.

16. Identify inconsistencies in rationale

For years the author worked opposite the executive director of a large labor union. One day the union leader would demand at the bargaining table that contract language should be exact and precise to assure that employees received their rights. The next day in my office he would ask to have the contract bent to help out a union member. On each such occasion I would ask him to make up his mind. Did he want rules to be applied literally, or did he not? Naturally, the answer was that he wanted the contract interpreted literally when it was to his advantage and liberally when that was to his advantage. I told him that he couldn't have it both ways. Over the years we learned to attach literal meanings to all contract language.

From time to time some negotiators will reveal an inconsistency in their approach to negotiations. When this happens, the opposing negotiator has an opportunity to win some points. For example, in the trading of proposals and counterproposals, each proposal begins to take on a certain priority. How many times have you noted that, despite the claim that the welfare of the employees is the most important issue, proposals which benefit the union and its officers often take higher priority? Such a situation reveals an inconsistency between the claims of the union and its actual practice. When this incongruency is called to the attention of the union, there is often a change in priorities--after the anger settles.

17. Obvious mistakes: confess and run

Every negotiator makes a mistake. The book Bargaining Tactics, volume I, is a book which contains some 300 tactics which can be used advantageously at the bargaining table. Actually, a truer title for the book could have been, "300 Mistakes I have Made in Bargaining and 300 Ways to Avoid them," since many of the tactics suggested were the result of having made mistakes. The issue is not whether negotiators make mistakes, but how they handle the mistakes they make and whether they learn from their mistakes.

When a mistake is made which is obvious to the opposition, it should be admitted, apologized for (if appropriate), and then attention should be quickly turned to other matters. If the opposing negotiator seems to want to exploit your mistake, indicate to him that his intent is clear and is not appreciated or wise since harmful acts between negotiators hurt both parties in the long run. If the mistake is not obvious, then the matter should be ignored, until such time that it is called to your attention. If a negotiator makes a mistake which is objected to by his employer, and the employer seems overly critical, then the negotiator may need to remind the employer that one's total record needs to be considered, rather than focusing attention on only one negative act.

18. **Analyze the structure of a question**

Some questions are structured in such a way that there is a built-in presumption which the questioner wishes the listener to agree to without realizing it. Such questions are a kind of "Have you stopped beating your wife" trap. The question is really used for an ulterior motive.

Here is a question which might be asked by a union leader: "Should strikers be denied welfare support?" Here is that same question asked by a management representative: "Should strikers be entitled to welfare support?" Here is another example: "Should employees be denied their rights to due process?" or, "Should employees be granted due process?" One mother at a PTA meeting might ask: "Should children be protected from sex education?" while another parent might ask: "Should children be denied their right to sex education?"

Here is a question that might be asked by a union representative: "Do you want to give the employees a fair salary increase of 10 percent, or do you want them to feel cheated and alienated?" The questioner has done several things in this question. First, he has set 10 percent as a "fair" salary increase. Second, he implies that anything less than 10 percent will cause the employees to feel cheated. And third, he has implied that since they will feel cheated, they will be alienated. Is this a threat? The question as posed by the negotiator should not be responded to in that form. The questioner has tried to restrict the listener to an "either-or" response. According to the question, either management pays 10 percent or something bad will happen. Chances are that management can pay less than 10 percent and nothing bad will happen.

19. **Getting in the last word**

Some negotiators seem to approach negotiations as if the process is a debate which must be won. Such persons seem to want to "get the last word," as if getting the last

word wins an argument. First of all, the process of negotiations is not the same as a debate or an argument. Although these processes might be used occasionally in negotiations, the final outcome in negotiations is based upon what the parties are willing to agree to, regardless of rightness, wrongness, win, or lose. Just because a union is correct in its position does not mean that management should necessarily agree to it. For example, the union may be "right" in asking for accumulated sick leave reports to appear on their paycheck stubs, but management may reasonably reject the request on the basis that it has agreed to something else and simply does not want to be bothered with this request.

So, getting in the last word is often irrelevant in negotiations, but where such a tactic is used, the following points should be considered:

- If the last word adds no new argument, don't bother to offer it, and don't bother to rebut it.
- If the last word offers a new argument, then rebut it, and keep rebutting until no new argument is raised.
- It is acceptable to speak last if there is an understanding that the last speaker is forbidden to present new arguments that the other side has no chance to refute. This rule may be found useful in fact-finding hearings and arbitration hearings.

20. Stature by association

In negotiations a negotiator has a better chance of obtaining an agreement if he has high credibility; that is, if he is trusted and respected. In presenting information which is to be used at the bargaining table the negotiator should make every effort to obtain his information from a source recognized by the opposition as reputable. Furthermore, the more "impartial" that source of information is, the better. For example, wage

information from the National League of Cities may be useful to management and passively acceptable to the union, but the same data taken from the U.S. Department of Labor probably would be more convincing to the union.

21. "Oh, I thought you meant . . ."

There are times in negotiations when one of the two antagonists may discover that he is being trapped into a conclusion which he does not want. Sometimes the answer to this problem is to reneg on a previous point or argument, but that undermines the negotiator's credibility. The object is to escape from such a trap with one's credibility intact. One technique to accomplish this is to ask, as the trap is ready to spring: "Wait a minute! Just exactly what are we talking about?" When the already known answer is offered, then say: "Oh, I thought we were talking about . . . ." This tactic allows the negotiator to extricate himself from a bad situation with his argument still intact.

22. Rebut reasons; don't attack conclusions

Unions often have an emotional and proprietary attachment to their proposals. This is understandable since many of the proposals come from union members, in which case the individuals who presented the proposal usually feel that there is good reason for the proposal. Other proposals come from the state or national parent group, and these are sometimes referred to as "boiler plates"; that is, items which have to be extracted from other contracts. But even with boiler plate proposals, the union often feels that such proposals are of universal interest and therefore should be included in the contract proposal.

Recognizing that unions feel seriously about their proposals, management should exercise caution in attacking the propositions. For example, a union may ask that employees be given two more days for sick leave, because some employees run out of sick leave and some employees must take annual leave for physical examinations. Rather than

attack the value of sick leave (which would undermine the credibility of management), the negotiator should rebut the **reasons** given for expanding sick leave. The negotiator might suggest that employees be allowed to use their current sick leave for physical examinations, and that the viability of a sick leave bank or group catastrophic disability income insurance be looked into for those few persons who exhaust their sick leave benefits. This approach not only avoids offending the union and undermining the credibility of management, but it forces the parties to look for alternative and innovative solutions.

On numerous occasions in this book, the reader has been admonished to obtain and understand **all** of the **real** reasons behind a proposal. Without such information, little progress can be made in disposing of the issue. By countering the reasons for a demand, the negotiator has gone far to remove the demand itself.

23. The nonsequitor

In listening to the comments of the opposing negotiator, care should be taken to examine carefully what is really being said. Quite often the facts presented can lead to a faulty conclusion. For example, a union spokes person states unequivocally: "Our members don't live in this community where they are employed, because they cannot afford it; therefore, they deserve a salary increase." That's a nonsequitor; that is, a conclusion which does not follow from the premise, irrespective of the validity of the premise. In this particular case, the union spokes person claims that all employees do not live in the community where they work. That allegation may be true, but it is likely untrue. But even if it is true, no one knows for sure why employees do not live in the community. Furthermore, there is no proof that higher salaries would allow them to live in the community where they work?

24. Listen to your inner voice

Sometimes bargaining creates ambivalent pressures on the negotiator. On the one hand, the negotiator would like to accommodate the other team, but on the other hand, an

accommodation might create a problem later on during contract administration. Given this dilemma, the negotiator should pause and analyze his intuitive feelings. As long as such feelings exist, there is the possibility that something is wrong with the proposal or that the negotiator does not thoroughly understand the proposal. Generally speaking, then, the negotiator should not enter into a tentative agreement until he is reasonably comfortable with it. Granted, there are times that a risk is justified in negotiations, but the risk should be more calculated than uncalculated.

25. Flinch!

In her book Body Language, Julius Fast[3] discusses the many nonverbal communications which we employ in everyday contacts with others. But conventional wisdom seems to advise that negotiators should always maintain a poker face. This advice is not sound in all situations, however. Certainly, there is a time to maintain a nondescript expression, but there is also a time to use the body and face to communicate. There is a time to smile and a time to frown. There is a time to nod and there is a time to shake; a time to gesticulate and a time to be restrained.

One way to underscore an objection to a proposal and forewarn the opposite side of what to expect is to apply some distinct body language. A natural and clearly understandable response to an objectionable proposal is a "flinch." A flinch is a jerking back of the head and upper body in response to something objectionable. It is usually a sincere reflex action recoiling from anything painful, dangerous, or difficult. It is a form of a wince and seems to have a universal meaning. Without speaking a word, the flinch carries more meaning than any words that could be spoken. When the opposing team asks

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[3]Pocket Books, 1970.

for a 15 percent salary increase and the instantaneous reaction of the management negotiator is a violent flinch, the union negotiator knows that 15 percent is not near the ball park and the stage has been set for perhaps a 5 percent counterproposal without a word being spoken.

26. Deadlines = action

The modern industrial world turns on deadlines. Without deadlines very little of value would take place. One of the original meanings of **deadline** was a line drawn within or around a prison that a prisoner passes at the risk of being killed. Certainly by that definition, a deadline is a point beyond which something bad happens. And that is what a deadline is. It is a date or time before which something must be done and after which the opportunity passes or a penalty follows. In other words, a deadline makes things happen.

There are many deadlines which can be established in negotiations in order to keep discussions moving expeditiously toward a conclusion. There must be a deadline to begin negotiations and a deadline to complete negotiations. In between those two points there are budget deadlines, impasse deadlines, and deadlines to accept or reject certain offers. One of the best deadlines is a calendar of meetings which clearly indicates when negotiations will begin, when meetings will be held, how long meetings will be, and when negotiations will end. As negotiations unfold, progress is monitored to assure that sufficient discussion takes place on all items. In this way, the parties can determine if they are falling behind, and, if so, meetings can be increased or lengthened. In this way the ultimate deadline of reaching an agreement is at work at all times. Without deadlines, negotiations wander aimlessly and endlessly, and under such conditions, negotiations usually deteriorate.

Keep the following points in mind as you use deadlines in negotiations:

(a) A real deadline is designed to force a desired action to take place. Therefore, use a deadline accordingly. Don't bluff, unless you are prepared to deal with backing down.

(b) People are generally conditioned to accept deadlines. Throughout our lives we face so many deadlines, that we are somewhat brain washed to accept them. A sales person says: "I can let you have this car at this price only until 6:00 P.M. tonight." The buyer accepts the deadline as real and acts accordingly.

(c) Is the deadline valid? Keep in mind that just as you may use deadlines as a bargaining tactic, so may your opponent do the same. If the deadline you set is not valid, are you prepared to deal with the opponent if he ignores it? If your opponent gives you a deadline, is it a real deadline, or is it being used only to exert artificial pressure on you?

(d) What will happen if the deadline is not honored? If the opponent does not meet your deadline, will you follow through with the intended action? If you fail to accept the opponent's deadline, are you prepared to cope with the consequences?

27. Cancel the meeting

As suggested earlier, a calendar of meetings should be set up for the negotiations cycle. Normally, all of the meetings called for on the calendar should be held if they are needed. However, in a few cases it might be necessary to cancel a meeting. Just because a meeting is on the calendar does not require that the meeting be held. There are times that one of the parties is not ready for the meeting, or there may be times when there are serious conflicts or illness which make a meeting impossible. In some cases a meeting might be cancelled simply to save time. After all, there is a point at which too much time can be spent in negotiations. It is at that point that time spent in face-to-face meetings becomes counter productive. Furthermore, the cancellation of a meeting may

be employed as a delaying tactic. However, when meetings are cancelled on a prearranged calendar, agreement should be sought from the other party.

28. A deadlock may work

Negotiations are filled with temporary breakdowns; that is, moments when the parties cannot seem to resolve an issue. Most of these temporary impasses, however, do become resolved in the course of discussions. Whether temporary or permanent, though, deadlocks can serve a positive purpose. A deadlock in negotiations takes place when both parties refuse to make further concessions. Such a stalemate indicates clearly how far both parties will go, giving both parties a known situation to work with. After consideration of the consequences of such a deadlock, one or both parties might prefer to make the needed concession to break the impasse. Until that happens, though, each party holds out in the hope that the other party will concede first. Sometimes the tactic works, and sometimes it doesn't.

When a temporary impasse turns out to be a permanent deadlock, both parties have apparently agreed that the deadlock is no worse than what might have come out of an agreement. Given such a situation, there are several possibilities:

- The issue remains unresolved and that's the end of the matter.
- The impasse is resolved by some third-party intervention.
- A strike is held and either or both of the parties make a concession which results in an agreement.

In the case of a serious deadlock, the question which both parties must ask themselves is this: Are the conditions which result from no agreement better or worse than the conditions that would result from making the concession necessary to reach an agreement?

29. "You want $1,000? All I have is $700

At some appropriate point in negotiations, there may be an opportunity to "bracket" the union by giving it maximum parameters within which to adjust its proposals. By way of example, let's assume that negotiatons have proceeded on money items to the point that the management negotiator feels that it is time to bracket the opponent. At that point he might state: "All I have is $100,000 to apply to any further salary increase, along with all other financial items on the table. If you will stay within the $100,000, I will cooperate with you on how to divide it." This approach, when timed properly, can be an innovative way to induce the union to accept a limit on the total money package by giving it some freedom in deciding how that money is to be spent. Somehow the phrase, "All I have is..." seems to be a persuasive way to convince the opponent that you have definite limits which must be adhered to.

30. Many forms of concessions

In the book Negotiations Strategies, the author lists 21 factors which should be considered before making a concession. By following those rules, few mistakes will be made in offering compromises. In addition to the suggestions offered there, here are some additional rules to follow:

(a) In practically all cases where compromise is possible, start out low or conservative. In the case of wages, for example, early offers should be low. In the case of nonfinancial items, the first offers should leave room for movement later.

(b) As far as salary offers are concerned, you don't have to go up in even increments. Each offer need not go up 50¢ per hour, or 1 percent per year, or $100 per year on each step. Offers should vary according to the response from the other party. For example, management might make three offers in a row to increase the salary schedule by $100 each offer. On the fourth offer, however, management drops to a $50

offer. That signals to the union that management does not intend to continue making $100 offers and is nearing its limit on what it will finally offer. On the other hand, if the union were to come down drastically in its salary position, management might want to respond in kind and dispense with the full ritual of bargaining.

(c) Management should keep score of concessions made. There always comes a time when the union conveniently forgets all of the compromises made by management. Also, keep in mind that the usual concession made by management is to give up something they never had, while concessions from management are true concessions; that is, management gives up something that it has had in the past. As an illustration, the union states: "If you will give us binding arbitration of grievances, we will give up the past-practice clause." This is a very poor offer of a trade. While the union is asking management to give up its historic right to make the final decision on employment matters, the union is offering to give back something that it never had. Don't, then, fall into the trap of trading real dollars for Monopoly dollars.

(d) The refusal to consider a proposal is sometimes judged to be an unfair labor practice and is always considered by the union to be a bad faith gesture. Therefore, if refusal to consider a proposal is an improper response, then the willingness to consider an item must be a proper response. At least it is not an unfair labor practice or bad faith bargaining. So keep that in mind. The willingness to consider a proposal is a legitimate concession.

(e) Avoid item-by-item concessions. Always package items together and employ the process of quid pro quo. Item-by-item negotiations are fraught with dangers. You are forced to offer an endless string of no's, and you are "nickled and dimed" to death, forcing you to concede on all the easy items and leaving all the difficult and unacceptable items on the table.

31. Scrambled and rescrambled

As a negotiator approaches his final limits of compromise, it may be necessary to find ways to give the appearance of concession, when in fact there is no substantive change in the last positions offered. This can sometimes be done by reordering a package proposal. For example, let's suppose that management has made a counterproposal as follows:

- Increase the first half of the salary scale by $700 and the last half by $500.
- Increase the payment on the hospitalization premium by 10 percent.
- Increase the pay for accumulated sick leave by $5 per day.

The union rejects the above proposal and makes little change in its previous position. Management then responds with the following "scrambled" counter:

- Increase pay for accumulated sick leave to $10 per day.
- Increase payment on the hospitalization premium by 9 percent, instead of 10 percent.
- Increase the entire salary scale by $600.

Unless one is in possession of accurate cost information, there is no proof that this last offer is better or worse than the first. It is up to the management negotiator to convince the union that the counter is not only better in toto, but a better arrangement.

Scrambling and rescrambling proposals has an added advantage. The tactic serves a clear message to the opponent that the offerer has almost reached his limit. That puts pressure on the union to accept the offer, or some combination of the offer.

32. Shelter in limited authority

A negotiator should be fully clothed in all necessary authority to make offers and counter offers and to enter into a tentative agreement, with each negotiator having every right to expect that the agreement will be ratified by the governing body and the union

membership. There are times, however, when a negotiator should indicate clearly that he does not have the authority needed to do what the opponent wants. By way of illustration, the union might ask that the management negotiator agree to place the union on the agenda of every public meeting of the governing body. One way to handle such a request would be to say: "Well, as you know, the governing body, under the law, has sole discretion for the format of its own meetings. Besides, I simply don't have the authority to deal with such a proposal." This is another polite way of saying "no," without actually saying no. True, it is possible that the union might respond by saying: "OK. We'll go talk to the governing body," but that is highly unlikely. Chances are the union will accept the response as a final answer.

There are three major advantages to using the limited authority tactic:

- It diffuses anger which otherwise would be pointed directly at the negotiator.
- It slows down the process of making concessions.
- It is another innovative way of saying "no" without using that offensive word.

33. Uncertainty exacts its toll

In the preface to one of his books,[4] Dr. W. H. Hutt states: ". . . fear of strikes inflicts far greater damage on the economic system than actual strikes." After all, the **threat** of a strike is offered in an effort to avoid a strike. The **threat** of a strike is an attempt to gain the advantage of a strike without incurring the risk of a strike. Why do threats often work? They often work because the person threatened would rather concede than face that which is threatened. But why doesn't the threatener simply do what he threatens? Because the threat is less risky than the act itself. Nobody likes to be threatened, and if the threat is carried out, there will be retaliation--sooner or later.

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[4]W. H. Hutt, The Strike-Threat System (Arlington House, 1973), p. vii.

But there is another reason why threats often work. That is because the perception of what will actually happen if the threat is carried out may be worse than the actual action. In other words, uncertainty can exaggerate the threatened action. The person threatened may conjure up in his own mind a far more frightening situation than reality calls for.

Incidentally, since threats harm good faith bargaining and insert an added risk factor to negotiations, it is usually wise to veil a threat if it must be used. In this way you may be able to gain the benefit of a threat with the risk that normally would accompany a blatant threat.

34. Answer a question with a question

Information is the power base of negotiations. Without needed information the negotiator can only lose. As stated earlier, however, information should not be given away freely. Therefore, when the opponent is probing for information, care should be exercised in answering questions since it is not known how the information will be used. In such a case, the person being questioned should be evasive in his answers.

One way to avoid a direct answer is to respond to a question with another question. For example, the opposing negotiator asks: "When will the budget office have the tentative budget ready?" Not knowing how the needed information will be used, the answer might be: "Why is that information needed?" This response is better than saying, "I don't know," or "I will not tell you." Once it is known why the information is needed, an appropriate answer can be given.

35. Time, too, takes its toll

As has been discussed in several places in this book, time is an important factor in all negotiations. Some conflicts will be resolved only after efforts over a period of time.

A reasonable salary offer made at the outset of negotiations seldom would be acceptable. That same offer made in a wrap-up session might be accepted happily.

The passage of time has a number of impacts on negotiations:

- The passage of time without a concession lowers the opponent's expectations.
- Time allows the important issues to come to the surface.
- Time provides a period to understand problems and find solutions to those problems.
- Time builds pressure on negotiations since other aspects of life must go on and will not stop for negotiations.

36. Pullbacks work (once)

In Chapter IV, "Bad Tactics," the dangers of reneging were identified, and the reader was cautioned not to use this tactic. However, there is an exception to almost all rules. Once in awhile a negotiator may make such a gross error that he has no choice but to retract a previous offer, despite the bad impression it leaves with the opponent. The author has made a number of bad offers which he would have liked to retract, but in almost all of those cases the offer stood. But if the mistake is serious enough, it should be corrected by withdrawing the offer.

Very infrequently (never more than once with the same negotiator), a viable tactic is to pull back an offer, stating that you overstepped your limits. Let us set up a hypothetical scenario. Negotiations have been difficult and many tactics have been used to get the union to budge, but still no settlement. The union's last wage demand was for 9 percent across the board, and there were no indications that the union would go lower. Management's last offer was 8 percent, but at a subsequent meeting pulls the offer back, stating that it had computed its total money package incorrectly. At this point, the union is likely to be convinced that it will be lucky to get the 8 percent offer back. If there is

credibility on the management side of the table, the tactic is persuasive, but it should be used only under the most unusual circumstances.

37. **Identify all options**

Earlier in this chapter the point was made that options constitute the foundation of bargaining power. In assessing the various union demands, and in facing threats by the union of some job action, all possible options should be identified and explored. But in most cases, despite the number of options which might be available, only one option will be used. When it is decided what option will be used in an effort to resolve an issue, the question should be raised, "Is no agreement better than exercising the option I have chosen?"

For example, a union demands that all overtime be on a voluntary basis, a demand which would be intolerable for management. Nevertheless, management has several options. One is to offer overtime on a seniority and allow turndowns on a seniority basis. Another option is assign overtime on some type of rotating basis. A third option is to continue the past practice of assigning overtime on the basis of need and qualifications and volunteerism to the extent that volunteers are available. Only one of the options will be chosen. The union would never agree to the last one and management is very reluctant to offer the first two. Consequently, management needs to ask itself which of the three options is best.

38. **Don't focus on the proposal itself, but what it represents**

Chances are that Israel does not want the Sinai, but more importantly, Israel wants security, and the Sinai is one way to achieve that security. When a union presents a hundred demands, all one hundred of those demands are an expression of only a few basic needs:

- The need for the union to stay in power and hopefully strengthen itself.
- The employees want more purchasing power.
- The employees want job security.
- The employees want protection against the times when they may not be able to work.
- In some cases, it appears that the employees want less work, but that is not usually the case.

Keep this concept in mind, because it will help to focus not on the proposal itself (which may stiffle innovative solutions), but on what the proposal represents. When a union asks for an increase in the number of paid sick leave days per year, what it really is asking for is increased protection against periods when employees are unable to work due to illness or disability. When that basic need is understood, many possibilities, other than increasing sick leave, may be better answers.

39. Offer wages in minimum terms

Most employees in public service prefer the standard wage scale; that is, where all employees in a given job classification receive the same compensation, varied only according to experience on the job. In other words, most public employees do not want any form of merit pay which would permit one employee with the same experience in the same job classification to receive more based upon superior service. On the other hand, many government agencies would prefer to have the flexibility to pay bonuses and merit increments to deserving employees. Therefore, to the extent that it can be done, all wage offers should be expressed in minimal terms. If that is understood, then management is obligated to pay no less than what is agreed to, but it retains its freedom to pay more for superior work or extra work.

In many government services (public school districts are the best examples) the employees would resist mightily in order to keep merit pay out of the ranks. Furthermore, some state bargaining laws require that merit pay can be paid only after negotiations have taken place on the issue.

40. The walkaway

An effective negotiator has a storehouse of tactics to draw upon in order to avoid using the same ones repeatedly, thus rendering them ineffective. The walkaway, like the pullback, is an example of a tactic which is effective under the right conditions, but one which can be used only once with the same negotiator across the table. The walkaway is used when one party wishes to convey to the other that exasperation has set in and that no more movement can be expected. It should be done as an act of controlled temper in an effort to underscore the gravity of the situation.

41. The loose ends dilemma

In order to protect the right of the employer to manage the agency, equivocal language must be present in some of the contractual provisions. For example, let's say that management is willing to give employees a 30-minute duty-free lunch period each day, except when there are "emergencies." So, the management negotiator proposes: "Employees shall be entitled to a 30-minute duty-free lunch period each work day, except for **emergencies**" (underlining supplied). The question posed here is how far should management (or the union) go to define language? If all ambiguous words and phrases are defined to the n^{th} degree, negotiations would never end. However, if no attempt was made to clarify language, the contract would be under constant dispute. Each case must be decided on its individual merits. Although experience is a good teacher, any negotiator

would be well-advised to study reputable texts on arbitration such as How Arbitration Works.[5]

42. Play one card at a time

Negotiations in any field always take longer than anticipated, especially if the process is approached methodically. A skillful negotiator never reveals his positions rapidly, but releases concessions only as they gain the desired response. Every topic under negotiations should be carefully planned so that several moves are possible, and each move should be made progressively in its own turn. In this way, there is less chance that an unnecessary concession will be made. This rule applies to practically all topics, whether wages or working conditions. Every topic is a position of least concession and a position of most concession, with steps in between. By playing out each step, one at a time, negotiations will remain under the control of the negotiator.

43. Let the opponent blow

In Chapter III, many techniques were discussed for maintaining decorum at the bargaining table. Throughout that chapter it was suggested that the emotional tone of negotiations should be controlled. Despite that good advice, however, there are times that the parties should be allowed to express their views with strong emotion. Not only will such expressions bring out the underlying problems, but emotional outbursts can have a cathartic effect. Only when such outbursts are used excessively should the opponent try to place limits. If temper outbreaks are permitted to go endlessly unchallenged, they will have a deleterious impact on the bargaining process.

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[5]Frank Elkouri and Edna Asper Elkouri, How Arbitration Works, 3d ed. (Bureau of National Affairs, 1973).

44. Arguments are not always bad

Some inexperienced negotiators confuse arguing with negotiating, but the two processes are quite different. Arguing is a process of two people presenting different points of view and attempting to convince the other to agree. Negotiating, on the other hand, even though it attempts to persuade another party, has the added dimension of an attempting to reach an agreement through the process of compromise. Arguing and debating have a win or lose connotation, but negotiating implies a win for both parties.

Despite the fact, however, that arguing is not negotiating, arguments can occasionally help bring out the real underlying issues in a dispute, and in that vein, arguing can be helpful if used sparingly.

45. Help your opponent sell the agreement

Once negotiations are over, or as they approach an ending, the opposing negotiator may have doubts as to whether he can sell the tentative agreement to the members. Given such doubt, the management negotiator can employ three important tactics:

(a) The management negotiator can go back over the agreement and identify all of the concessions which were made, especially those that were particularly difficult for management to make.

(b) The union should be informed again why certain concessions sought by the union could not be made.

(c) The union should be reminded of the futility of the alternative, i.e., no agreement.

46. Believability and threats

In the chapter on bad tactics, the inadvisability of threats was discussed, but we all know that some form of threat must be used at some time in one's labor negotiations career. As far as the author is concerned, however, the only time that a threat is

justified is when faced with serious threats from the opponent. But even then, the response should be more in the form of a warning than a threat. No matter how justified management may be in threatening a union, threats seldom win any friends among the employees who are represented by the union.

If a threat must be used, however, it must achieve its function; that is, it must stop an action unwanted by management. Consequently, a threat should not be used unless it is to be carried out, if necessary; and, a threat should not be used unless the opponent believes that it will be carried out if the unwanted action is not stopped. Without believability, threats are useless.

47. Build a bridge

No enlightened employer should rely solely upon the union for understanding what employees want and don't want. A wise employer keeps all lines of communication open directly to and from the employees, without the intervention of the union. Failure to keep open lines of communication with employees makes the employer vulnerable to the misguidance of the union. For example, the union may claim that time off for shop stewards is a number one priority for bargaining. However, management may know better, if it has kept in touch with rank and file employees. In such a case, management might discover that, although time off for shop stewards may be a first priority for the union, it may be a low priority for the general membership, and that's what counts when it comes to ratifying the final agreement.

48. The union must win

If a union feels that it "lost" the negotiations which led to the labor contract, it will try to make up for that loss in the next round of negotiations. Therefore, even though management may have gotten more out of negotiations than it had hoped for, it should convey a message to the union that the union "won" negotiations. Even when negotiations

have been done with for a long period of time and the union asks, "Did we get all you had?" the answer should be, "You got more than we had."

The author personally experienced the reverse of this advice several years ago. After having successfully engaged in contract negotiations which involved some retrieval bargaining (without a strike or even a demonstration), the governing body met to ratify the proposed contract. During the public meeting one of the members of the governing body complimented the author and stated how surprised she was that the governing body got so many "wins," which she began to enumerate. Fortunately, the chairman cut her off, but not before some damage had been done. The union head was in the audience and heard it all. The next morning the union called in a fit of anger and demanded that negotiations be reopened. Although negotiations were not reopened, the union carried a grudge for the entire year of the contract and came back with a vengeance the next year.

49. The weight of precedent

Many union proposals are acceptable because they reflect some past practice. Also, some union proposals are rejected, because they run contrary to past and continuing practices. The mere fact that a practice exists and has existed for a period of time, gives that practice a degree of legitimacy. Practices do not come into being and persist for no reason. There is always a reason for practice, even though those reasons may not be entirely reasonable.

For example, when employees have always been given rest breaks in the morning and in the afternoon, it would be very difficult to reject a union proposal to include such a benefit in the upcoming labor contract. By the same token, when all employees have been required to punch in and out on a time clock, it would be unlikely that the employer would agree to discontinue this practice simply because the union objected to it. Management would probably maintain that the practice had always existed and would continue to exist;

and, the union probably would accept that answer, because established practices have legitimacy.

CHAPTER VI

UNION TACTICS

In Chapter XV of Negotiations Strategies and Chapter IV of School and Government Labor Relations, the author discusses in considerable detail the nature of labor unions and how they operate. These two chapters are highly recommended to those readers who wish to anticipate union behavior in bargaining.

In addition to the information contained in those two sources, following are some tactics employed by the union at the bargaining table that are important for managers to know about:

1. Purposeful ambiguities

One strategy of unions is to win in grievance arbitration that which could not be won in collective bargaining. One way to do this is to include the labor contract words and phrases which are purposefully vague, which, if disputed, would provide a chance for a win by the union. For example, let us assume that the union wants to place restrictions on the dismissal of its employees, but management will not agree to specific language. So, the union suggests that employees shall be dismised for "just cause." Once this phrase is in the labor contract, it is then up to an arbitrator to decide when an employee can be dismissed, and the odds favor the union that arbitrators on the average will give a better deal to the employee than the employer would give. So, in such cases of purposeful ambiguities, the union may have a chance to win in arbitration that which it could not win in bargaining.

Other words to be suspicious of are "fair," "equitable," "comparable," parity," etc. All of these and similar words may be designed to dupe the employer into agreeing to more than appears on the surface.

2. Hedges

Another form of ambiguity is hedging language, which is language designed to give the impression of being something which it is not. For example, when the President of the United States announces, "The Consumer Price Index may go as low as 5 percent this year," he is really saying that the lowest that the CPI will go 12 months from now is 5 percent, but that's unlikely. However, the listener hears something quite different. Given the great credibility of the office of the President of the United States, the listener may swear that the CPI will soon drop to 5 percent.

So when the union says, "Give us a good offer and we'll meet you half way," the union is using a hedge; that is, it is trying to give the impression of something that is not so. The union may really be saying, "Give us a good offer so we can turn it down and demand more."

3. "You'll save money"

Some union negotiators recognize that their proposals will be more acceptable if they are economically sound; that is, that they will save money or increase productivity. Therefore, attempts will be made to convince management that a certain proposal will save money. Although such attempts may be sincere and such claims may be true in some instances, each such claim must be examined carefully.

As an illustration, sick leave banks have grown in popularity, because they are claimed to be of no cost to the employer since they are financed by the sick leave donations of the employees themselves. The fact of the matter is, however, that every day of sick leave used by an employee from the sick leave bank is a day paid for by the

employer, in that such a day is a day that under other conditions would not have been paid for. The union's belief in its cost-cutting proposals can be tested by suggesting that any shortfalls in promised savings will be deducted from the employees' wages!

4. **"It will improve morale"**

How many times have you heard the union spokes person say, "Our proposal will improve employee morale"? Although some union demands, if granted, would improve employee morale, there is no way in most situations to prove that a given union proposal would enhance the morale of employees. Quite often this approach is a way to dupe the employer into believing that if it will make a certain concession, it will receive the love and a loyalty of the employees, and that if it refuses to make the requested concession, the employer will justifiably incur the burden of unhappy and alienated employees. If the union insists that a certain compromise will improve employee morale, ask the union to put such a guarantee into the contract and to specify how such morale will improve productivity.

5. The holdback

As discussed in the chapter on bad tactics, the reader was admonished not to accept too quickly an acceptable offer, especially if it is a first offer. Chances are there is even a better offer which can be exacted under pressure. As tempting as it might be to accept an offer which is good, reasonable effort should be made to test the opponent's sincerity. Quite often there is movement left on almost any proposal--under the right conditions. The union's need for a contract is overpowering, and when pushed to the wall it will often make more concessions than management had planned on.

6. Perceived unity

A union is a political organization and, as such, it has all of the problems of any political organization in trying to please everybody. If the union is to conduct successful negotiations, it must have a united membership behind it, or at least the union must appear to have such backing. Consequently, the union will rely heavily on trying to convince management that the union has the full support of the workforce.

Rather than accept the allegation made by the union, management should have its own communications into the ranks of its employees. Management should not accept as gospel the union's claims of employee support. Chances are the employees are less supportive of the union than appears on the surface. If management is certain that it knows its workers, it should let the union know that management is fully aware of what the employees want, don't want, what they will do, and what they will not do.

7. Funny money

A union will often lay on the table a long list of demands, most of which cannot be accepted. Sooner or later the union will offer to "drop" or "withdraw" some of these demands if management will offer higher wages, more benefits, or better working conditions. Such an offer may appear tempting on the surface, but if analyzed carefully, the union is actually offering to trade a doughnut hole for a doughnut. Negotiators recognize such union proposals as "funny money," "Monopoly money," or "throwaways." By making such an offer the union is really saying, "If you will give me something you have, I will give you something I don't have." That's an offer too bad to accept!

8. Item-by-item negotiations

Quite often a union will present a thick contract proposal and demand that every item be addressed one-by-one. In such a case, the union wants a clear "yes," "no," or

"maybe" answer on every item. The danger to management in this approach is that the union will set aside all of the acceptances, get as many concessions as possible from the "maybes," and then go on to seek concessions or compromises on the no's. The result is that management gives away all of its acceptances, leaving on the table only the items on which it would be very painful to concede.

To avoid the pitfall of item-by-item bargaining, management should engage in "package bargaining." In this way, no union demand is accepted until the objectionable or unacceptable demands are withdrawn. For examples of this tactic, consult both books, Negotiations Strategies and Bargaining Tactics.

9. The boiler plate

Another tactic used by the union is to present a master contract distributed by the national headquarters and to demand that the contract be accepted in its entirety, or at least with mutually agreeable modifications. Management is then supposed to set about to work from the union's language, an approach which poses several problems for management. First of all, being forced to work from the union's language is disadvantageous to management, because they are dealing with language they have had no part in constructing. Second, management is forced to deal with each and every item. Furthermore, there is a much greater chance of an impasse arising because of the number of items that must be dealt with.

One way to counter this union tactic is for management to receive the union contract, state that consideration will be given to all items, and then return days later with a completely rewritten management contract ready for signature. Although the union will probably react with considerable anger, that is all right, because the union will eventually come around and accept the right of management to prepare contracts just as does the union have the same right. A word of advice, however. The contract submitted

by management should be one that it can defend and one which it would be happy to have ratified. However, at the same time, the contract should have room for movement in it. In other words, the contract should not be presented as a final offer.

10. **"What you're saying is . . ."**

If a union is to stay in power it must be viewed by the employees as their protector and benefactor. In other words, the employer must be made to appear as the "bad guy" and the union must be made to appear the "good guy." Unfortunately for the union, though, management does not always act like the "bad guy," so the union must create a bad guy where one does not exist. For years, the author worked with a union negotiator who would regularly reword the author's responses so they appeared to be negative rather than positive responses. For example, the union spokesman would ask for a 20 percent salary increase and the author would respond with some reasonable counterproposal, but one unacceptable to the union. At that point the union negotiator would say: "What you're saying is that you don't respect the workers and you don't want to pay them what they are worth." The author would then be forced to set the record straight by making it clear that such an interpretation was the willful creation of the union negotiator, and that such responses were inappropriate for professional negotiators. After about a year of this relationship, the union spokesman finally learned that such a tactic served no purpose and may have been counter productive.

11. **Bargaining grievances**

Sometimes the bargaining table is contaminated with discussions that should not be there. For instance, quite frequently some union demands are really grievances or complaints which could have been handled administratively. Where possible, such concerns should be separated from the bargainable issues. By way of example, the author was once presented with a demand that all employees be guaranteed safe and healthful

working conditions. After persistent questioning, it was discovered that the source of the demand was a complaint from an employee who worked in an area which was cold in the winter and hot in the summer. A quick directive from the maintenance supervisor corrected the situation and the demand was withdrawn.

12. Emotionalism

Very often in labor negotiations emotions become intense, particularly on the union side of the table. This emotionalism, although sincere in some cases, is often a bargaining tactic to induce a concession from management. The tactic is used for several reasons:

(a) In some cases the union will try to make management feel guilty for some condition with which employees are unhappy. The theory is that if enough feelings of guilt can be generated on the management side of the table, a wanted concession will be made.

(b) Emotionalism can also be used to radicalize the union membership, so that there will be increased employee support for the union. For example, by accusing management of engaging in "union-busting" tactics, the union can create an instant false controversy in order to attract attention. Even though the allegation is untrue, the charge is often accepted as the truth, or at least doubt has been placed in the minds of the employees as to the decency of the employer.

When faced with the tactic of emotionalism, the management team should remain composed and not be baited. If damaging lies are spread among the employees and the public, however, management should take whatever actions are necessary to set the record straight.

13. "You can afford it"

Frequently, a union spokesman will attempt to engage the management team in discussion over whether or not the employer can afford to grant certain compensable

benefits. Sometimes such attempts are based on naivete, while often such attempts are premeditated. In either case, such efforts should be resisted. Certainly, the union would be offended if the employer suggested that employees should take a pay cut because "they could afford it." To such an allegation, the union would understandably reply: "That's none of your business!" Similarly, it is the function of management to determine what can be afforded. That is not a negotiable topic. In no public sector bargaining law that the author is familiar with is "affordability" listed as a mandatory topic of bargaining.

In the private sector, when the employer states that a union proposal must be rejected, because the employer "cannot afford it," the union has a right to have the company books made available to the union. Naturally, this is the last thing that an employer would want to do. By the same token, when a public employer states that it "cannot afford" a union demand, the employer is making "affordability" negotiable, the result of which should be obvious. For example, under such conditions, affordability would be subject to review in the impasse procedure.

Discussions on affordability should be avoided in almost all instances simply because there is practically no way to win such arguments. Affordability is not a fixed amount of money that everybody will agree to. Affordability in the public sector is largely a political decision based upon priorities. A public agency can always afford to give the union more by rearranging its priorities and taking money from another part of the agency's operation. The clear warning, therefore, is **do not discuss affordability.**

From the employer's point of view, affordability is always a consideration, but there are numerous ways to express this at the bargaining table without actually stating that the union proposal cannot be afforded. For example, the employer can say:

- "We have decided to allot only a certain portion of our budget to this area of employee benefits."

- "The employer has many demands on its limited budget, so therefore we will not agree to your proposal."
- "Our funds have been used up by other budget demands, and we have no funds for your proposal."

14. "Give us your rationale"

Whenever a rejection is made of an offer, the person making the offer is entitled to reasons. In giving the reasons for rejection, it should be kept in mind that the opponent will attempt to neutralize, or counter, those reasons. Therefore, caution should be used in responding to the demand: "Give us your rationale." In presenting one's rationale, care should be taken that the reasons for rejection are sound; otherwise, they will be quickly undermined by the opposing negotiator.

Another reason for using this technique in negotiations is to trap management into discussing issues which are nonnegotiable. By engaging management in such discussions, it is likely that the nonnegotiable topic will become negotiable.

15. Concept bargaining

Some unions make an initial presentation at the bargaining table in terms of very broad proposals. For example, its demands might be stated like this:

- An improved salary scale.
- Increased payment in hospitalization payments.
- More holidays.

You will note a serious lack of specificity in such a list. This approach is referred to as "concept bargaining," and should be dealt with carefully. One of the purposes of concept bargaining is to draw from management its position on major areas of bargaining before the union actually makes an actual offer.

16. Bargaining from a false premise

Some negotiations proposals are made on the assumption that their fulfillment will result in a better situation. This tactic is referred to as "bargaining from a false premise," and here are some examples.

- A lounge for the employees will improve morale and productivity.
- Fewer students in the classroom make better education.
- Free physical examinations for employees will save the employer money.
- Employees work better when they are "involved" in decisions which affect them.

A list of similar false premises could be quite long, if one thinks back over the type of proposals made at the bargaining table. The use of bargaining from a false premise is generally a very effective technique, because management automatically assumes that the proposal in theory is good and the only obstacle is insufficient funds. At that point, the only question is how much management will spend on the proposal.

17. Comparability

Many union proposals are accompanied by charts and graphs showing how other government jurisdictions do better. For example, a policemen's union will often show how other jurisdictions pay better salaries. School teachers will attempt to show how other school districts pay their teachers better. The objective of such comparison, apparently, is to shame the employer into paying better salaries. However, there are generally two weaknesses found in this tactic:

- Quite often the other jurisdictions chosen have been chosen carefully on the basis that they pay more.
- No two government districts or agencies are exactly comparable.

Even if comparability determination were possible, wages are not necessarily a function of such comparability. Wages are determined by what the employer is able to afford, and what wage the employer is willing to pay in order to attract, retain, and promote the type of employees the employer wants.

18. Guilt transference

Most government bureaucrats and politicians are well-intentioned. They want to do the "right thing." Therefore, in response to the question: "Don't you want to help your employees?" the typical manager is likely to respond: "Yes," since he is fearful that any other response would indicate that he doesn't want "to do the right thing." It is amazing how frequently this tactic works. However, upon prudent consideration, it should be clear that the response to the question: "Don't you want to help your employees?" should be phrased tactfully. For example, the response coud be:

- "I don't understand what you mean."
- "What specifically are you proposing?"
- "We always have the welfare of our employees uppermost in our minds."

When operating at its best, this tactic takes a union proposal and turns it into a guilt burden for the employer. The best rule to follow to avoid this trap is to ask the following silent question before responding to each proposal: "Is the premise of this question valid?"

CHAPTER VII

COMMUNICATIONS AT THE BARGAINING TABLE
OR
I THINK YOU BELIEVE THAT YOU THINK THAT YOU UNDERSTAND WHAT I THINK I SAID, BUT I DON'T THINK THAT WHAT YOU THINK YOU HEARD IS WHAT I THINK I MEANT

Labor contracts are arrived at largely through the process of verbal communications between two negotiators at a bargaining table. This chapter will examine the complexity of such communications.

The capacity for spoken words to express meaning is infinite. Most English words have more than one meaning and each meaning can be altered by voice tone, facial expression, and body language. Some English words have so many definitions that their meaning can be determined only in context with surrounding words. Given the complexity of the human personality and human interrelationships, is it any wonder the misunderstandings arise? Although misunderstandings can be tolerated and corrected in our daily discussions with others, there is little room for misunderstandings in labor negotiations, because the relationship between labor and management requires that the final understanding be put in writing and be understood. The final result of discussions at the bargaining table is a labor contract which is binding on both parties. If the labor contract contains misunderstandings, the contract will not serve its purpose, which is to create a relationship of labor peace. Consequently, negotiators must be skilled in seeking out the real meaning of language used at the bargaining table.

There are Several Levels in Talk

Generally speaking, there are four levels in discussions at the bargaining table:

- What the speaker is saying;
- What the speaker thinks he is saying;
- What the listener thinks the speaker is saying; and
- What the speaker and the listener finally agree to as what has been said.

1. What the speaker is saying

In negotiations, the negotiator postures constantly and couches his language in an effort to achieve some acceptable agreement on an issue. Consequently, the initial statement by a negotiator on a given issue is seldom what the negotiator finally will agree to. In other words, initial offers and counter offers seldom represent the speaker's true views on the subject under consideration.

2. What the speaker thinks he is saying

Frequently, people delude themselves into thinking they have said something which in fact they did not say. Such delusion is likely when the speaker is subconsciously unwilling to state clearly his position for reasons of fear, embarrassment, or other similar impediments. The result is that the speaker thinks he has said something clearly, but in fact has obfuscated.

3. What the listener thinks the speaker is saying

In many cases what we hear is what we want to hear, and in many cases we hear what we don't want to hear. Such distortions can be caused by the state of the listener's mind during discussions. For example, when the response to a proposal is, "We'll take a look at that offer," the offerer of the proposal may interpret that response to mean either that the opponent is interested in the proposal, or that the opponent is rejecting the

proposal by employing the tactic of delay and sidetracking. What the listener thinks the speaker is saying is dependent upon the listener's state of mind and the backdrop of previous relationships and experiences between the two negotiators.

4. What the speaker and the listener finally agree to as to what has been said

The final level of communication at the bargaining table is the understanding actually put into writing and initialed by both negotiators. All other understandings become moot once this is done and all previous discussions become irrelevant, except in nthe case of grievances, in which case the final meaning of language under dispute is resolved by an arbitrator who will likely consider discussions which led to the disputed language.

Learn the Many Ways to Say "NO" Without Really Saying "NO"

Most items brought to the bargaining table by either labor or management are matters considered to be important, and as important matters, they should be dealt with accordingly. But not all important proposals can be accepted just because they are important. Some union proposals simply cannot and will not be accepted by management. In such cases, management must reject such proposals, causing as little resentment and disappointment as possible. In most cases where a proposal is unacceptable, the wise negotiator employs many techniques to reject a proposal without stating an outright "NO!" Following are some workable techniques to say "no" without actually saying "no."

1. Try to ignore all unacceptable proposals

On any list of proposals from a union there are bound to be items which are acceptable and items which are unacceptable. By ignoring the unacceptable items and

speaking only to the acceptable items, the union is made to hear only positive comments. Should the union ask about all of the items which are not spoken to, i.e., those ignored, the management spokesman should state in an unoffensive manner that such items are not acceptable.

Although such a response makes it clear that the ignored items are rejected, at least the union is spared the pain of hearing a rejection on each and every item. There is one danger in ignoring all unacceptable items and discussing only acceptable items. Unless the negotiator makes it clear that acceptable items are acceptable only if the ignored items are deleted, the union may assume that all acceptable items are final and that only unacceptable items remain on the table for negotiations.

2. Defer unacceptable items

Another way to reject a proposal without actually saying "no" is to defer the matter. Hopefully, the opposing negotiator will recognize the deferral as a rejection and spare himself the humiliation of an outright rejection. Should the negotiator insist on an answer, however, there is no choice but to state one's position. The level of forcefulness in rejecting a proposal, however, should be determined by the circumstances. Some rejections should be indirect and soft, while some rejections require a forceful "NO!"

3. State that the proposal is nonnegotiable

In any list of union proposals there are items presented which are nonnegotiable. All proposals must fall into one of three categories, as far as negotiability is concerned:

(a) A proposal can be a **mandatory** topic of bargaining. That means neither party has a choice as to whether or not it must bargain on the subject. Under most public sector bargaining laws (except the federal bargaining law), employee compensation is a mandatory topic of bargaining, for example.

(b) A proposal can be a **permissive** topic for bargaining. This means that the proposal may be negotiated by mutual agreement of the parties. For example, under most public sector bargaining laws, the selection of employee tools and office equipment would not be a mandatory topic of bargaining. But under some conditions and under some bargaining laws, the parties could agree to negotiate what tools and equipment would be used by employees on the job.

(c) A proposal can be a **prohibited** topic for bargaining. This means that the proposal is prohibited by law for negotiations, even if both parties are willing to negotiate on it. For example, under most public employee bargaining laws, the actual selection of managers would be prohibited from negotiations.

If a proposal is unacceptable to management, it may be that the item is either prohibited or permissive. In either case, management may respond by saying something like this: "Although under ideal or other circumstances we might be willing to consider this proposal, we decline to negotiate on this proposal since it is not a mandatory topic of bargaining." Beyond that statement very little else should be said since any further discussions might be interpreted to be negotiations, making the topic negotiable, and thereby forcing management to offer an outright "NO!"

A word of caution is needed here regarding proposals which management believes are nonnegotiable. First of all, unions strongly resent any allegation that any of their proposals are nonnegotiable, and, therefore, the union can be expected to react accordingly. Second, management should not state that a proposal is nonnegotiable unless it is willing to back up its allegation with appropriate legal citations. If no such precedents or citations exist, management should be prepared to defend and win its position all the way to the final forum of appeal.

4. State that the funds for the proposal are not included in the agency budget

Sometimes an unacceptable proposal can be rejected with minimal resentment by simply explaining the agency budget has no provision for the proposal. Although some union negotiators may respond that the budget should be changed, the fact is that what's in the budget and what's not in the budget is a significant factor to deal with. After all, the negotiator can always explain that in order to put something in the budget, something must be taken out.

5. Use quid pro quo to reject the unacceptable proposal

A very common method in negotiations to reject an unacceptable proposal is to offer a concession on an acceptable item if the opponent withdraws an unacceptable item. Naturally, a skillful negotiator will attempt to rid the table of as many objectionable items as possible for the least concession possible.

6. State that the proposal is illegal

Since government operates under the control of law, and since laws are made through a legislative process by sovereign bodies, many union proposals call for concessions by the public employer which would be illegal. For example, a teachers' union might propose that teachers decide what students should be expelled from school. Clearly, such a proposal, to be satisfied, would be contrary to education statutes in all states. Therefore, when an unacceptable proposal is illegal, it should be rejected by so stating and not simply rejected by a flat "no." However, note this caveat. If management considers a union proposal to be illegal, management should try to give at least one other reason why the proposal is unacceptable. Otherwise, the allegation of illegality might be found to be

invalid, and management, therefore, according to good faith rules of negotiations, would be obliged to grant the unacceptable proposal to the union.

7. State that acquiescence to the demand is beyond your authority

Most negotiators are given parameters within which to negotiate. Without specific authority, negotiators may not go beyond these limits. In some cases, an unacceptable proposal can be rejected on the grounds that the negotiator has no authority to negotiate. For example, in several instances, the author has been asked by teacher unions to agree that the union would be given certain special rights at school board meetings. In all such cases, the response has been the same: "Sorry, I have no authority to negotiate with you on this matter, in that the school board controls the conduct of its own meetings." To date, such a response has always settled the matter.

8. Modify the proposal

Some proposals are rejected by changing the language and the intent of the proposal to make the unacceptable proposal acceptable. Such rejections are far more palatable than an abject "NO." For example, a proposal that employees may view their personnel folders at will could be made acceptable by countering that employees may view their personnel folders by appointment and in the presence of an authorized management official. The new language is an automatic rejection of the original proposal without even saying "no."

9. Some proposals are administratively unsound

Some union proposals may be worthwhile in the abstract, but in reality cannot be agreed to because of the administrative complexities required to implement the proposal. For example, a proposal to list the current retirement benefits on every employee

paycheck might be a good service in theory, but not many public employers have the technical, clerical, and administrative wherewithal to get such information on each paycheck. Consequently, the proposal would be rejected by explaining the administrative obstacles involved. Again, there is a rejection without actually responding "no."

Avoid Barriers to Persuasion

A large part of successful negotiations is based upon the ability and power to persuade the opponent. Barriers to communication may arise between the parties, causing negotiations to sometimes fail to reach an agreement. Some of these are:

1. Confusing facts with inferences

Quite frequently, **inferences** are offered in negotiations just as if they were **facts.** Facts to prove an argument are often hard to come by, while inferences are easily manufactured. For example, it is not uncommon for public sector unions to demand equality with private sector salaries and benefits. Such demands infer that employees in industry have better wages and benefits than do employees of government. Given such a demand, the respondent should deal only with the facts. Should the respondent consider the benefits of the private sector to be relevant, then a request that such inferences be substantiated by facts ought to be made. Coincidentally, if the respondent does not see any relevance in such comparison, no debate should be entered into on the matter.

2. Opinions and value judgments

Statements in negotiations are often preceded by the phrase, "In my opinion . . ." Opinions, like inferences, are not facts. Management negotiators will often claim that employee benefits and wages are competitive with similar jurisdictions. If such rationale is to be introduced as relevant to benefits and wages, then the union should challenge such a statement as being a statement of opinion, not fact.

3. Jumping to conclusions

Upon receiving the original proposals of unions, management often jumps to the conclusion that the union is determined to take over the government, or at least bankrupt it. Such conclusions are exaggerated, and simply cause overreaction, thus creating a barrier to good communications. It may be that a union is sometimes guilty of making exorbitant demands at the outset of negotiations, but it is no excuse for a competent management negotiator to jump to conclusions not founded on demonstrated fact.

Another example of jumping to conclusions is exhibited when unions accuse management of trying to "break the union" simply because management will not accede to demands considered to be important by the union. Unions may assume that governing bodies are "out to get them"; but with such an attitude, it becomes easy to yield to the temptation to jump to conclusions.

The most effective way for both parties to avoid such a pitfall is to listen with an open mind and keep on negotiating. Chances are that both parties will find that they misjudged the intentions of their opponents.

4. Judging in terms of black and white

Very few issues in labor negotiations are clear cut. With two adversaries involved in the negotiations process, chances are that there is some right and wrong on both sides. Negotiators who see every issue as either black or white frequently have serious problems in working out agreements. After all, the very nature of negotiations involves compromise. If compromises are to be made, a skilled negotiator must avoid hard and fast concepts of what is right and wrong.

5. False identification

To reemphasize, effective negotiations require that both negotiating teams keep an open mind. Anti-union prejudices on the part of management and feelings of worker exploitation by the union are often manifestations of deep-seated hostilities. Such prejudgments regarding the adversary can only hinder a process which already has many obstacles. Management negotiators often identify union leaders as liberals, while union negotiators may see members of public governing bodies as conservatives. Both are frequently wrong. Such false identifications often cause statements of the opponent to be misinterpreted; the listener hears through a filter which screens out relevant information, thereby causing a barrier to communication. The net result is ineffective negotiations.

To avoid the trap of prejudice and false identification, the negotiators must know themselves. Prejudices should be identified as such and kept under control.

Other Valuable Advice

Over the years the author has noted and recorded certain observations related to communications at the bargaining table. Following are some of those observations from the world of the practitioner.

1. Some words and phrases lead us from the truth

There is a large American lumber company which is referred to in its impressive national television commercials as the "tree growing company." The commercial only shows beautiful green forests and men planting tree seedlings on barren lands. In fact, this company is in business to cut down millions of trees, and if the reader ever has observed whole mountains scalped of their covers, the scene is remembered as a horrible devastation. This example is not to imply that this company does not do the best it can with reforestation, but only to show how unpopular truths can be mitigated by half truths.

For years the author thought that the "human resources department" of the large city in which he resided was the city's public employment service, a place where an employer could obtain workers; i.e., human resources. Actually, the "human resources" department was the city's welfare department, an agency engaging in activities which were just the opposite of that implied by the agency's euphemistic title.

Another example of misleading titles is the title "professional association." Many teachers and other professional client-oriented employees do not wish to have their organization referred to as a labor union. Rather, they prefer to belong to a "professional association," because the term "labor union" connotes a truth which is unpopular to many people.

2. Some phrases are designed to make the listener more receptive

When we disagree with a speaker, we run the risk of creating a degree of hostility which creates an obstacle to agreement. Therefore, the skillful negotiator employs a number of tactics designed to minimize hostile reactions from the opposing negotiator. The skillful negotiator also recognizes these tactics when used against himself, too.

Phrases such as, "As you know . . . ," "I agree but . . . ," "I'm sure that you will agree that . . ." are all designed to soften the listener's resistance to a position being presented by the speaker. The statement, "You know more about this than I do," is a clear attempt to enlist the listener's support through flattery. When one negotiator says to another, "I have never heard a presentation made so skillfully; however . . ." the listener is being softened up for a rejection. All of these phrases and similar phrases indicate that the psychological interplay between the negotiators is just as important in winning arguments as the presentation of orderly and convincing relevant facts.

3. **Some statements are designed to thwart response and gain psychological advantage**

As stated before, negotiations is as dependent upon presentation of relevant facts as psychological interplay. If one negotiator can undermine the other's confidence on a certain point, the performance of the opposing negotiator probably will suffer. The statement, "Anybody knows that!" is designed to indicate to the listener and his team members that the listener is less than well-informed on a particular point. The accusation, "That's ridiculous!" is another way of destroying the opponent's argument. All such statements, by themselves, are meaningless. Without explanation, little significance should be attached to them.

4. **Some statements are designed to enlist support**

Did anyone ever introduce a topic to you, saying, "Just between you and me . . ."? "Just between you and me" usually means that the speaker has already told someone else, or that the speaker hopes that the information will be repeated by the listener without official attribution to the speaker. Such a phrase is designed to gain a relationship which otherwise could not be achieved. It is often used to dupe the listener into revealing confidential information which would be useful to the speaker. Or in some cases, the phrase is used as a ploy to assure that certain information is leaked to the right person. This tactic is not uncommon in negotiations. So, whenever engaged in negotiations, and someone from the opposing side (or a plant from the other side) says, "Just between you and me . . . ," watch out!

5. **Some words and phrases are designed to mask an important point**

Did you ever notice how often the important points in some discussions are brought out late in the discussion? Did you ever notice how often important points are preceded by phrases such as:

"Incidentally . . ."

"By the way . . ."

"Oh, before I forget . . ."

"I just remembered . . ."

Actually, these phrases are designed to mask the importance of a point in the hope that the point will have greater chance of being accepted if its true importance to the speaker is minimized. "Incidentally" does not mean incidentally; it often means, "Now, I want to tell you the most important point." "Oh, before I forget" often means that the speaker is now going to tell you the last thing he is likely to forget. Don't be misled by such introductory phrases and conclude that the topic which follows is of little importance to the speaker.

6. **Don't oversell**

One of the many sound rules which competent negotiators follow runs something like this: "Use as little ammunition as possible to achieve the objective." In trying to convince the opponent to acquiesce, the speaker should arrange arguments carefully and in logical order. As the case is presented, the argument should unfold only as rapidly as necessary to evoke the necessary responses. Once the desired response seems imminent, the negotiator should back off. In such a situation, protracted and continued argumentation is often counter productive. Unfortunately, however, some unskilled negotiators let their egos control their mouths, resulting in argumentation beyond the point of

necessity. Such continued commentary can open up areas for rebuttal which otherwise would have remained undisturbed.

A successful sales person learns early in his career to abide by the rule to get out as soon as the sale is made. Any lingering can only work to the disadvantage of the seller. The same is true in labor negotiations. Once a negotiator has gotten the agreement sought (either on an individual item or on the total contract), negotiations should be immediately terminated and the parties should separate. Continued discussion on issues will only open new issues. Many good agreements have been ruined because one or both parties did not know when to stop talking.

7. Euphemisms can sometimes help

Some words and concepts are red flags to the opposing party. Therefore, it is sometimes necessary to disguise a proposition by using a word or phrase that is less expressive or direct, but considered less distasteful or less offensive than another word or phrase, but which says the same thing.

For a practical example, some management persons are instantly repelled by "seniority" proposals, even though they recognize that some such proposals will be acquiesced to eventually, but reluctantly. Given such a situation, the wise union spokes person might refer to employee "rosters" instead of "seniority lists." Instead of "agency shop," a union might try the term "service charge." In other words, both negotiators should seek to use words and phrases which do not raise the hackles of the counterpart.

8. Watch those cliches, or "truer words were never spoken"

A cliche is a statement depicting a stereotypical analogy which seldom expresses a universal truth. Although cliches may give color to one's language, they are almost

always trite and hackneyed. And, although cliches may have their origin in some ancient lesson learned by man, cliches are usually overused and worn out facsimiles of the truth.

Cliches are used in our everyday language, and it is surprising how often they are accepted as valid contributions to making a point or winning an argument. In negotiations cliches should be recognized for what they are: attempts to influence one's opponents on the basis of unsubstantiated argumentation. Furthermore, for many cliches, there are counter cliches. Following are some examples of cliches:

(a) "He who hesitate is lost." Although this cliche may be used to encourage a hasty acceptance of a negotiations proposal, there is a counter cliche of equal uselessness: "Fools rush in where angels fear to tread." In either case, the cliche either should be countered or ignored.

(b) Although team members may caution their spokesman not to be too hasty in accepting a proposal by reminding him to "look before you leap," the negotiator might well respond, "faint heart ne'er won fair lady." Again, however, the cliches may make for colorful dialogue, but they contribute little to serious negotiations.

(c) Some cliches are worse than useless; they actually do harm by implying untruths. For example, the cliche, "You can't teach an old dog new tricks," may not upset dogs, but to imply that older persons cannot learn is harmful and insulting to all senior citizens as a class and perpetuates a harmful stereotype which contributes to age discrimination.

(d) Certainly, if unions believed the cliche, "Don't rock the boat," they would not make any proposals at the bargaining table, because "You can't fight city hall." Both cliches clearly would represent poor guidance for labor unions.

9. Some demands may camouflage grievances

Elsewhere in this book it has been suggested that each demand should be examined carefully by questioning of the opposite negotiator. The purpose of such questioning is to discover the underlying problem represented by the demand. Under close examination, it is often discovered that a given demand was given rise to because of an unresolved grievance or complaint. For example, the author was recently presented with a proposal that all employees be given a reason if not selected for a promotional position. Upon careful reading of the current labor contract, it was discovered that employees already were entitled to such information. But the union spokesman insisted that the contract was not being adherred to. The union was finally convinced to use the grievance machinery if anyone was denied his entitlement, and the proposal was withdrawn.

10. Four simple rules to clear communications

Although there are legitimate occasions to use purposeful ambiguities, the normal rule is to communicate proposals and counterproposals clearly. Here are four simple rules for clear communications at the bargaining table:

- Express single thoughts. Avoid many thoughts tied together.
- Use several short sentences instead of one long sentence.
- Use Anglo-Saxon words commonly understood by the average adult.
- Repeat important points.

11. You can't disagree over facts

Some discussions in negotiations could be shortened if the parties would deal less in opinion and more in facts. In a recent argument with a union spokesman, the author contended that personal leave was being used in a possible violation of the labor contract, in that personal leave was being taken before and after holidays, weekends, and vacation

periods; and, personal leave was not supposed to be used to extend such days. The union representative maintained that my assumption was unsubstantiated, and, therefore, my contention could not be taken seriously. The next week the actual use of personal leave by computer printout was presented to the union. The printout clearly showed that personal leave was being used on Fridays, Mondays, and the days before and after holidays and vacation periods far in excess of other days. The presentation of these facts was instrumental in successfully modifying the existing contract provision on personal leave to make it more acceptble to management.

12. Mind sets cause misinterpretations

In order to conduct successful negotiations, there must be trust between the parties, for without trust excessive time and energy must be expended solely for the purpose of taking protective precautions. Most transactions between people depend on a certain degree of trust, and the same is true for negotiations. Each negotiator must assume that his counterpart is reasonably honest and trustworthy; otherwise, there could be no tentative or permanent agreements. When the opponent is viewed through the eyes of prejudice, fear, and suspicion, the chance of misunderstanding increases greatly. As a result, simple statements by the opponent can appear to be veiled threats or attempts at deception. Therefore, the listener should examine his views and feelings toward the opponent to be sure that such attitudes do not color the meaning of the opponent's statements.

13. Try for an echo

Sometimes you never really know if you've been understood unless the listener repeats what has been said and offers an explanation of what has been said. Rather regularly the author will repeat what he thinks he has heard to be sure that there is mutual understanding of a proposal. And sometimes it is advisable to ask the opponent to

repeat what he thinks he has heard from you. Invariably, this method of echoing what the opponent has said brings about clearer understandings.

14. Reasons should precede unpleasant responses

Most union proposals must be rejected or modified. Few are acceptable in their original form. Elsewhere in this book the reader has been given many suggestions for ways to soften the impact of rejecting a proposal. Here is another suggestion. When an unacceptable proposal cannot be ignored, but must be clearly rejected or modified, rather than state the rejection at the outset, give the reasons for the rejection first. If the rejection is given first, the reasons for the rejection will not be listened to. And if the reasons are not heard, the acceptance of the rejeciton will be hindered.

15. Get the underlying reason(s)

Quite often union proposals are not what they appear to be on the surface. A request to increase the sick leave allotment for all employees may turn out to be, under careful probing, a request for additional sick leave only for a few employees who exhaust all of their regular sick leave due to catastrophic illnesses. Increasing sick leave for all employees in that case would not be the best way to solve the problem. Therefore, the question, "What's the problem?" should be asked over and over again until the real problem is understood.

16. The delivery can override the message

There are times that a counterproposal that might be acceptable, if presented in a pleasant manner, is rejected because of the method of presentation. A counterproposal delivered as a threat is less likely to be agreed to than the same counterproposal delivered as a polite request for cooperation. For example, a salary offer accompanied by the threat, "Take it, or everything is off," is bound to entail the risk that the union will

choose the latter alternative, ". . . or everythir g is off." However, that same offer made in a solicitous manner would be more likely to be accepted--under normal conditions.

17. Written format is important

Much confusion can be caused in communications at the bargaining table due to the size of the original contract proposals and due to the resultant amount of paperwork which accumulates during the bargaining process. Often the union will present its original typed proposals in single space, but this is not the best way to prepare proposals. The best method for preparing proposals is to have them typed with double or triple spaces with the line number noted on each margin at the beginning and ending of each line. This tactic reduces confusion and wasted time since all material to be discussed can be located easily. Also, the blank space between the lines, by virtue of double or triple spacing, is available for making notations and modifications in language. Naturally, each page number should be noted on each page in the consistent location.

18. Recognize the signs of interest

In order to know when and how to compromise, the negotiator must have a feel for the opponent's receptivity to a proposal. If the opponent has a totally negative attitude, that calls for one approach. On the other hand, if the opponent shows interest in a proposal, that calls for a different approach. Some of the signs of interest are:

- Questions which indicate only portions of the proposal are unacceptable.
- Nodding and smiling.
- A request for caucus to consider all or a portion of the proposal.
- Comments of interest from members of the opposite team.

19. Identify body language which works against you

The author has conducted labor relations seminars for negotiators at all levels of government throughout the nation. In some of these seminars, practicums are provided in simulated bargaining, which are then video taped and played back for critiquing. For those negotiators who have never seen themselves in action, the taping experience is very revealing.

In one such recent seminar, there was an experienced negotiator who had a habit of chewing gum, but no one had ever told her of the impression that her gum chewing made. In taping her negotiating sessions, a special effort was made to zoom in on her while she chewed. The more intense she became, the more she chewed. When the tape was played for a critique, no comment was needed. The television tape was worth a thousand words to her. She vowed she would never chew gum again. Not that there is anything terribly wrong with gum chewing. It's just that it is one more unnecessary distraction in the negotiations process and places a question in the opponent's mind as to why the opposing negotiator appears to need to rely on chewing gum.

20. What bothers you about the opponent's behavior?

Occasionally, a negotiator will be encountered who has some idiosyncracy which is annoying and distracting. More often than not, these mannerisms are an integral part of the negotiator's personality over which he has little control. Unless the objectionable behavior is harmful or unbearable, it is best ignored; otherwise, an unneeded obstacle is raised between the parties; and, the average negotiator faces enough obstacles in negotiations without having to deal with problems he can resolve within himself.

21. "How many ways do I love thee?"

Take the sentence which has been spoken billions of times, "I love you." How many ways are there to say these words? There are dozens of ways. Try it and see. Say the sentence as a declaratory sentence, and then ask it as an interrogatory. Change the inflection on the words and change the intonations in your voice. Change the expression on your face and then use body language. How many ways did you find to say, "I love you"? Did you find in your experimentation that you can say those three words in a way that means, "I detest you"?

The lesson here is to listen carefully to the ways proposals and counterproposals are offered and the ways questions and statements are expressed. Should the opponent respond to your final offer by saying in a friendly manner, "Is that all?" you may be on the verge of an agreement. However, should your opponent shout in a threatening tone with disgust on his face, "Is that all?" you probably don't have an agreement.

22. Don't hurry

A basic rule in negotiations is to take your time both in listening to the opponent and in expressing your own points. Also, adequate time should be taken in caucuses so that solutions are not sought under pressure. Furthermore, the periods between meetings should be of sufficient duration to allow for adequate homework to be done. Although the union may want to keep the pressure on the management team to hurry on, that pressure should be resisted. The author has made many mistakes in negotiations and most of them were attributable to negotiating hurriedly.

23. I am what you think I am

Regardless of what we may think of ourselves, we are to others only as we appear to them. We may think we are thoughtful, friendly, and courteous, but unless we are seen as

such by our counterparts across the table, we will be treated as we are judged. Consequently, the serious negotiator should practice regularly techniques which bring out the cooperative traits in others. The serious negotiator should evaluate his own behavior at the bargaining table and learn to put his best foot forward. As mentioned earlier, video tapes can be invaluable in evaluations of negotiating styles, especially if colleagues are allowed to offer constructive suggestions.

24. The spoken word is more expressive than the written word

The printed word is two dimensional, while the spoken word is three dimensional. The printed word has no emphasis, no sound, and no body language. The spoken word, however, has all of these ingredients. Therefore, a proposal or counterproposal should be introduced verbally before it is submitted in writing. This allows the speaker to put the proposal in its most favorable light. When it is time to present the written proposal, it is often a good tactic to read the proposal first. Through the use of the voice and body language, the proposal can be made to sound better than it reads.

25. Avoid these five barriers to understanding

Have you ever wondered why your counterpart across the table sometimes does not understand you? Here are the five major reasons why he may not:

(a) **Resistance to change.** Many disputes in negotiations can be resolved only with creative and innovative solutions, but such solutions require an open mind to change. Do you have such an open mind, or are you restrained by convention? Sometimes a union spokes person will have the solution to a problem, but because it may be out of the ordinary, the management spokes person turns it down.

(b) **Thinking about our own responses.** Some negotiators seem to view negotiations as a debate or an argument which must be won at all costs. Such a negotiator is often so

concerned with his own point of view that he is unable to listen with an open mind to his opponent. If you find yourself thinking more about what you are going to say than what your opponent is saying, you may need to slow the pace of negotiations by taking a caucus to prepare your responses, rather than trying to prepare them while your opposite colleague is speaking.

(c) Suspicion, assumptions, and prejudice. Some negotiators view their opponent as the enemy, one who cannot be trusted under any circumstances. With such a view, the most innocent comment becomes a plot to do the other side in. The author once observed a negotiations session where the relations between the two parties was fraught with suspicion. At one point the union appeared to make a valiant effort to open the flow of agreements by agreeing to a management proposal. The spokesman for the employer was so suspicions (and shocked) that he called for a caucus. As soon as his team had entered the caucus room, he asked, "What are they trying to pull?"

(d) Selective listening. Do you ever find your mind wandering in negotiations? Do you ever find yourself tuning out certain comments by the opponent? If your answer is "yes," then chances are you are missing vital information and need to discipline yourself to listen more actively. Suggestions for listening tactics are found in the next chapter in this book.

(d) Poor use of words. As stated earlier, long sentences, complex sentences, technical words, and foreign words and phrases should be avoided. All expressions should be short and simple and to the point.

26. Don't accept offers at face value

As stated before, excessive suspicion can impede the achievement of an agreement. That is not to suggest, however, that each proposal should not be examined carefully. Almost all proposals, when studied seriously, contain a host of questions, problems, and

flaws. To the novice negotiator a union proposal that employees should be disciplined for "just cause" might appear clear and safe. A more seasoned management negotiator, however, could lecture long on the dangers of agreeing to such a proposal. As in the case cited here, don't accept any proposal on face value.

27. New, but not new

For those negotiators who do not have an open mind and who are resistant to change, creative and innovative solutions to problems can be threatening. One way to overcome this resistance is to show how the proposal (which is really a new approach) is actually not new. For example, the author once wanted to resolve an impasse by agreeing to grant a sick leave bank for employees, but the chief executive did not want to agree to such a benefit. After explaining to him how such a bank would operate and naming many places where such banks existed he finally agreed to support such a venture and the impasse was resolved. By showing the chief executive that the new proposal was not really new, he became more accepting.

28. The missing ultimatum

The reader was advised previously in this book to listen for what is not said as much as to what is said. That means many things. For example, it means that until the union gives a final offer, it still has room left for movement. Therefore, negotiations need not be discontinued until one is convinced that the union has made all of the concessions it is willing to make.

29. Miscellaneous suggestions

In closing this chapter, here are some additional communications tactics which the author has found to be useful in negotiations:

(a) Personal criticisms should be left out of negotiations, and attention should be given to the issue under discussion. The opposing negotiator's personal behavior should be the focus of attention only when it interferes with progress toward agreement on the substantive issue under consideration.

(b) Watch out for unsubstantiated phrases such as: "Research indicates . . . ," and "Employees believe that . . ." Such phrases are designed to deceive the listener into believing that scientific data is about to be introduced, when in fact the statement which follows is often just opinion.

(c) Evasive language has its place in negotiatons. No negotiator is required to reveal his full thoughts on a topic under consideration. For many reasons, the negotiator may not wish to give a clear response to a proposal.

(d) Try to use "we" instead of "I." The negotiator who says, "We must reject your proposal," is less likely to incur hostility than the negotiator who says, "I must reject your proposal." In the former case, the rejection is somewhat less personal and the decision appears to be the result of consensus, rather than the result of just one person's judgment.

(e) Don't intentionally trap your opponent--at least so that he is aware of it. A wise negotiator tries not to back his opponent into a corner with no way out. For example, unalterable ultimatums leave the opposing party no way to retreat from a difficult position.

(f) Don't terminate every statement with "OK?" Such unnecessary affixes to complete statements only invite disagreement.

(g) Be positive in presentations. Instead of saying, "Why don't we . . . ," say, "Let's . . ." The former approach invites the listener to give a reason why the proposed action should not be taken, while the latter approach is less likely to invite disagreement.

CHAPTER VIII

HOW TO LISTEN AT THE TABLE

The Nature of Listening

1. Watch out for these symptoms of poor listening

When you are listening to others talk do you sometimes find yourself daydreaming about more enjoyable matters? Even though you try to focus your attention, do you sometimes find yourself losing interest? Are you ever distracted from conversation because of some overriding anxiety? Have you ever feigned attention to a speaker, smiling and maintaining eye contact, when in fact you had no idea of what was being said? Do you sometimes concentrate so much on what you want to say that you don't hear the speaker? And when you do listen intently, do you sometimes become emotional as you listen to some of the points being made?

If your answer is "yes" to most or all of these questions, then you are probably like most people and could use some training in how to listen. Most of us encounter the problems mentioned above, but we can learn to listen better by following a few simple rules described in this chapter.

2. The advantages of listening

A serious negotiator recognizes that the first step to persuasion is attentive listening. Beyond that fundamental rule, however, listening carefully in negotiations is imperative for a number of reasons:

- Listening is a form of concession, in that active listening constitutes the first step in the consideration of a proposal, and consideration of a negotiations proposal is fundamental to good faith bargaining.
- Careful listening is a form of respect paid to the opponent. By giving our time and attention to a speaker, we are conveying to the speaker that what is being said is important.
- Attentive listening is cathartic to the speaker and his team, in that he is able to unload his burden on the listener. This is an important point. Even though management may not accept the union's proposal, at least the union team can say, "We told them so."
- Careful listening in negotiations will reveal the underlying reason for a proposal, and usually the underlying reason is easier to deal with than the surface reason.
- Listening, accompanied by probing, will help reveal the priority of the union proposals, and as explained elsewhere in this book, knowing the priorities of the union demands is essential to effective use of quid pro quo.

3. <u>The dangers of not listening</u>

The failure to listen carefully at the bargaining table can create a number of problems which the listener can blame only on himself.

- Failure to listen can be construed to be an unfair labor practice, in that some public sector bargaining laws require that management listen to the union proposals. Under most bargaining laws it would be a serious mistake to refuse to listen to a union proposal, unless management had determined that the proposal was nonnegotiable.

- Failure to listen attentively can justifiably infuriate the people on the other side of the table. From the union point of view, it has put much effort into its proposals, which the union considers to represent the wishes of the employees. Failure to listen with interest can seriously offend the union team and cause unneeded acrimony.
- When the management team fails to listen to the union, the union will seek other audiences to speak to, such as the governing body or the press. Naturally, such a course of action is not in the best interests of negotiations generally and the management team specifically.
- Many bargaining proposals cover underlying problems, and only through persistent probing and attentive listening can these real problems be identified and understood. And, until the real problem is understood, effort to reach an agreement is pointless.
- The failure to listen to the opponent will allow his priorities to remain hidden, and with the union's priorities being unknown, management may end up trading its treasures for the union's garbage.

4. Listening can preclude manipulation

At least half of what we learn in life is through listening, but at the bargaining table listening is responsible for much more than half of what we learn. True, we can read the union's proposals and we can watch the union team's behavior, but without verbal questions and answers there can be no understanding between the parties. Therefore, careful listening in the negotiations process is imperative.

Penetrating listening provides a definite advantage in negotiations. It can protect the listener from being manipulated by the opposing negotiator. Following are the major

communications techniques used by negotiators to lead their opponents to predetermined conclusions.

(a) Unsupported claims. A proposal is more likely to be accepted if the offerer can substantiate the proposal with facts. However, the facts are not always there, so the opposing negotiator may try to give the impression that the facts are there. This can be attempted in several ways. The union can use the phrase, "Research indicates that our position is correct," but never identify precisely the source of the "research," or even present the research for documentation purposes. Or, the union may claim that "Our members must have this request," as though the union has some infallible clairvoyance in reading the minds of all of the employees. Therefore, when the union makes a claim of fact, ask yourself if you want to accept the claim, ignore it, or demand validation.

(b) Problem--Cause--Solution. Another communications tactic used in negotiations is to identify a problem, then identify the alleged cause of the problem, and then propose a solution to the problem. This approach sounds very logical, just as natural as "A - B -C." There are several problems in this method of structuring, however. First, there may not be a problem, or if there is a problem, it's not the one presented. Second, the cause of the "problem" may not be accurate, and third, the solution may not be proper for the "cause," or the solution may be a correct solution to a non-problem.

For example, a union claims that employee morale is low because they are offended by being required to use time cards to punch in and out of work. The proposed solution is to require that supervisors take visual attendance. It all sounds very simple on the surface; however, where is the documentation that morale is "low"? But even if morale is low, what is the cause? Chances are that low employee morale is rooted in factors far more complex than the requirement that employees punch in and out at the beginning and end of their work shifts. Furthermore, the solution suggested by the union to solve the alleged problem may turn out to be another problem--even more serious than the original

"problem." The type of attendance check suggested by the union is fraught with all sorts of problems, as any experienced administrator could identify.

Chances are in this hypothetical example, a number of union members resent being required to be punctual to work in the morning and might like to slip away early at the close of the workday. However, persistent probing and listening might reveal an underlying real problem for which there is an acceptable solution.

(c) Credibility by association. Sometimes we can be convinced to do something that we would not otherwise do simply because others are doing it. We all know the power that the values of our peers have on us, and we all recognize the use of association in commercial advertisements in the media. According to these advertisements, if a famous athlete drinks a certain brand of beer, the beer must be good. The same technique is used at the bargaining table. In pursuance of this technique, a union will often present documentation from a reputable source in order to validate a bargaining demand. For example, the union may present information from the United States government, or studies from an association to which the employer belongs, or provisions from labor contracts signed by other similar employers.

(d) The unanswered question. A negotiator will sometimes ask a question which is meant to be a declaration and to which no answer is wanted. Why is this done? Because this technique is less likely to be challenged than an outright accusation against the listener.

For example, a union proposes that employees be provided a private telephone in the employee lounge to make personal local telephone calls. Management responds by maintaining that there would be no way to stop long distance calls. The union responds by asking a question which it feels has already been answered and no further answer is needed; namely, "Oh, don't you trust your employees?" The question is really an accusation designed to cause the employer to install a telephone as an act of contrition to

prove that it believes that its employees are trustworthy. Also, the question, by implication, suggests that while the employer does not trust the employees, the union does.

(e) Glittering generalities. The more credible a proposal is the more likely it is to be accepted. Consequently, the skilful union negotiator utilizes several techniques to enhance the credibility of his proosals. One such technique is to use "glittering generalities" to support a specific proposal. For example, the union might ask to meet with the chief executive or the governing body before policy decisions are made, because such a procedure would ensure greater "democracy" in the agency through the use of "open channels of communications." By associating democracy and open communications with the union proposal, the negotiator is relying on glittering generalities to support his point. In other words, if the request is denied, the employer is opposed to democracy and open communications and, therefore, in favor of dictatorship and secrecy.

(f) Veiled threats. Elsewhere in this book the dangers of using threats was discussed and certain conditions were identified under which threats might be necessary. As a general rule, however, threats should be avoided since they cause decisions to be made on the basis of fear of harm, rather than on the basis of reason and what is mutually agreeable. A threat is used to force the opponent to take a wanted action or stop an unwanted action. The threat is a notice that unless such action is taken (or stopped) certain harmful consequences will take place. The threat is delivered with the hope that the wanted action will take place so the threatened consequence will not need to be implemented.

There are a number of dangers to using threats. First, they change the tone of negotiations for the worse. Second, there is the chance that the party threatened will retaliate in a similar fashion. Third, the threat may need to be carried out, which could cause unforeseen consequences; and fourth, the party offering the threat may be unable to

carry it out, causing a real loss of credibility. One way to minimize the risk of these potential dangers is to use a **veiled** threat; that is, one that when literally translated is not a threat, but conveys, nevertheless, an **implied** threat. In this way, the threatener may be able to get his threat across, but not take accountability for it. For example, a union spokes person might request that all overtime be assigned by the union on the basis of seniority. Management justifiably responds with a rejection. The union retorts with, "Well, we will talk to our members to see if they are interested in continuing to work overtime." The implication of this statement is quite clear. The union is threatening to interfere with the right of management to require and manage overtime work. But when interpreted literally, it is not a threat. In other words, it is a threat without the dangers of a threat.

(g) Testimonials. Occasionally, someone not on either negotiating team will be brought into the bargaining room to offer testimony on some point which is being made. The purpose of bringing in such persons, who usually have first hand experience with the topic under consideration, is to give credence to the proposal. For example, the union might be proposing that some environmental improvements be made at a certain work site. To support its position, it might call in some workers from that site who give personal testimony as to the undesirable nature of working conditions there. Since the managers at the bargaining table probably have not worked at the site in question, they are hesitant to take exception to the testimony. Nevertheless, under such conditions, no attempt should be made to resolve the proposal until an appropriate member of the management staff has examined the work site conditions long enough to draw conclusions.

(h) Emotional appeals. Most managers, like other employees of an agency, are well-intentioned and reliable workers who want to do the right thing and abhor taking any action which might hurt an innocent person. For the most part, the persons sitting on the management side of the table want to help employees as much as the union does. In

making its decisions at the bargaining table, there is often room for managerial discretion. It is the union's job to wring as many concessions out of that managerial discretion as possible. One way to accomplish this is to appeal to the humane instincts of those on the opposite side of the table. Carried to an extreme the technique is tantamount to throwing oneself on the mercy of the court.

(i) Visual reinforcement. It may be that a picture is worth a thousand words, but some pictures don't give an accurate image of reality. It is not uncommon in labor negotiations to attempt to reinforce a point by presenting visual data. For many the depiction of large numbers of facts in graphic or other visual form is easier to understand. However, because such visual presentations portray facts convincingly, they should be viewed with a critical eye, especially when such material is being presented by an opposing negotiator.

The author remembers one such presentation when a union spokesman was trying to convince management that the salaries of supervisors had risen more rapidly than the salaries of nonsupervisory employees. A part of his presentation consisted of presenting two graphs, one of which plotted salary growth for supervisors and one which plotted in a similar manner the salary growth for rank and file employees. Sure enough, the line on the graph for supervisors seemed to rise more rapidly. Careful examination, however, revealed that different graph paper was used for each graph. As a result, the salary line for supervisors did rise more sharply, but in actuality, the rate of salary increase was about the same for both groups of employees.

(j) Country boy. In order to expedite negotiations as many barriers as possible need to be removed. One such barrier which can impede negotiations is fear of the opposing negotiator. If the opposing negotiator is seen as a cunning and untrustworthy negotiator with a killer instinct, the other negotiator will put up his guard and be so cautious that compromises will come with great difficulty. On the other hand, if the

opposing negotiator appears to be friendly, not too serious, and not too informed, the other negotiator will probably relax and be willing to open up and take a few risks. Although a good negotiator should possess all of the good traits that were mentioned in Chapter II, the wise negotiator minimizes any traits which might frighten the opposing negotiator or cause any other barrier between the parties. That's why it is a good tactic not to come on too strong in negotiations. It is best to perform at a low key, utilizing as few skills and tactics as necessary to get the job done. So watch out for the country boy!

(k) The bandwagon. For several years the author conducted a form of consortium bargaining for an entire state. The program consisted of regular meetings of management negotiators from throughout the state. At these meetings lectures were given and information was exchanged. The one tactic which these negotiators encountered most was the "whipsaw" tactic, by which the union negotiator insists that a given provision be included in the labor contract of one employer, because it exists in the labor contracts of other employers. In other words, jump on the bandwagon along with everybody else. The fact of the matter is, however, in many of those situations there was no bandwagon. More often than not the union was just giving the impression of a bandwagon. But even if many other employers do include a given provision in a contract, that is no reason by itself for another employer to do the same. The next time that tactic is tried on you, identify all of the union demands that are not included in other contracts and suggest that is sufficient reason not to include the demand in your contract.

5. Missing facts

As discussed earlier in this book, you can't argue over facts. However, facts can be manipulated so that they give less than an accurate conclusion. A used car salesman is good at this tactic. He will tell you all of the good things about the car, but fail to tell you what is wrong with it. In all negotiations, look for the missing facts.

By way of example, many teacher unions will present data indicating that teachers are paid less than "comparable" professions. However, the crucial fact left out of these presentations is the fact that teachers on the average work 20 percent fewer days each year than other workers. When this datum is factored in, the differences become insignificant. So before you become convinced by the opponent's impressive display of facts, look for the missing facts.

The Major Rules for Listening Properly

As a general rule, all other factors being equal, the negotiator who speaks the least and listens the most is the better negotiator. After all, it is rather difficult to learn much while one is talking. On the other hand, as we listen to others, we are receiving free information. Granted, the information may be slanted, but if one is aware of the methods used to manipulate a listener (as described earlier in this chapter), the traps of poor listening can be avoided. Following are the most important rules to help a negotiator listen effectively to ferret out needed information at the bargaining table.

1. Respect the other negotiator's opinion

The opposing negotiator believes in his proposals just as much as the management negotiator believes in his responses. Both negotiators have an important job to perform, and each should respect the other in the process. It may be that a certain proposal appears foolish or irresponsible, but the response to such proposals should not be derision or ridicule. When faced with such a proposal, the negotiator should find something good to say (at least about the intent of the proposal), and then proceed to rebut tactfully the reasons for the proposal, rather than the conclusion.

The important point being made here is that respect should be clearly shown for both the negotiator personally, as well as the ideas and opinions which he expresses. Attention should be focused on the issues and not the person. Although there may be

justifiable temptation to show scorn for a proposal, the temptation, in most instances, should be resisted. The few exceptions to this rule have been discussed elsewhere in this book.

2. Control those emotions

Most people know when they are under emotional stress if they will just be willing to recognize the clear signs. Practically everyone has been involved in an argument where they knew they were allowing their emotions to get out of control. The signs of emotional reaction are many and vary with the person and the individual situation. Emotional stress may manifest itself by an increase in the heart beat rate, perspiration, blushing, shortness of breath, impaired speech, shaking of the hands, stomach irritation, headache, compulsive talking, rapid eye movement, fidgeting, and other similar reactions which are not a part of the person's normal behavior.

Some people who have a strong belief that emotions must be suppressed may be so successful in sublimating their feelings that they fail to recognize the true nature of a situation. Although a negotiator should learn to control his emotions within reason, he should be able to listen to his inner voice. Usually the inner voice is trying to tell us something of importance. It is only when the emotions get out of hand that the negotiator may make a mistake in negotiations. When being totally controlled by our emotions, we may blurt out some statement which should not be made, make a wrong decision, or overlook some important information. In short, no one can negotiate effectively if he is being ruled by emotion rather than reason. When the emotions seem to be getting out of control, and all else fails to keep them under control, the negotiator should call for a caucus, or, under extreme conditions, request that a recess be taken. In this way, unnecessary damage can be avoided and a cooling off period can be provided. Chapter III discusses in more detail how to control the emotional climate of negotiations.

3. Repeat what the speaker has said

Due to distractions and mind sets a listener often will not hear everything that is said, or he may misinterpret what is heard. The author has tried to discipline himself to minimize this problem by requiring of himself that he be ready to repeat (or at least to paraphrase) what the speaker has said at any point in his testimony. This habit has been of considerable help in minimizing misunderstandings, and has helped convey to the opponent that what he is saying is important. This technique has an added advantage, in that when the testimony is repeated, there is an opportunity to restructure the testimony along more acceptable lines. Quite often the opposing negotiator will agree with the rephrasing, even though it may be different from what he originally presented. The advice being given here does not suggest that everything that a negotiator says should be repeated or paraphrased by the other negotiator. Certainly not! As the reader has been warned several times, some tactics will only work once with the same negotiator. Any tactic used at the wrong time and under the wrong circumstances, or used excessively, can backfire. So common sense is the keynote in the use of all tactics.

4. Don't counter attack

In a recent practicum in training negotiators for the federal government the author was struck by how frequently each negotiator felt compelled to immediately rebut every point made by the opposing negotiator. The response appeared to be that if the opponent's points were not countered immediately (even if it meant interrupting), they would be interpreted by the opponent to be accepted. This is a very bad tactic. The best procedure to follow is to listen attentively to every comment made by the opponent. Notes should be taken on each and every relevant point, and the listener should indicate clearly that he is listening. The only time that the listener should speak is when he is asked a question or when he needs to ask a question which cannot wait until the end of the testimony.

When the negotiator has finished speaking, the respondent across the table should carefully analyze what has been said, ask any needed questions for clarification, and then give a response. The response could be a rejection (accompanied by the reasons being given first), an acceptance (if there is an acceptable quid pro quo), a modification of the proposal, a suggestion to go on to other topics, or a request for a caucus to consider the proposal. Regardless of the response, however, it should not be a negative or hostile attack on the opponent or his position. Furthermore, the response, whatever its nature, should be only that which is minimally needed to accomplish the objective on that particular proposal.

5. Slow the speaker

One major problem in negotiations is that the speaker may present more information than can be processed by the listener. Consequently, every effort should be made to cause the speaker to move more slowly in his presentation. This is a very important point. Not only will a slower presentation help the listener understand what is being said, but in his efforts to slow the speaker the listener will inevitably raise a number of important questions. It is this willingness to take time to listen and probe that brings out the important facts in negotiations. By getting all of the facts and views which the opponent has to offer, and by getting all of the relevant facts on the matter through independent research, the listener likely will find that the underlying problem is not as serious as that presented at the outset.

But even when the speaker is slowed in his presentation, the opposing team still may find unanswered questions as it analyzes the testimony in a private caucus. That is why it is generally not a good idea to accept any proposal on the spot. In most cases, a proposal, even though it may appear to be acceptable, should be analyzed in the privacy of the caucus where various points of view can be concentrated on the matter.

6. **The role of silence**

Except for those who have intimate relationships, such as a husband and wife, most people when put together seek to fill the void of silence. Having observed many other persons in many bargaining situations, the author has been impressed with this phenomenon. Seldom is there silence at the bargaining table. When there is silence, it lasts only for a few seconds. It is as if neither party can tolerate silence.

Have you ever found yourself, in anticipation of what a speaker will say, filling in the anticipated words when he pauses? For example, the union spokesman says: "We have consulted with our members about your proposal and we have found that they are generally . . . (pause)." Hearing the pause, you rush to fill in the blank with a number of words ("unhappy," "opposed," "offended," etc.), none of which may be correct. That is a bad tactic. It not only interrupts the speaker (which is bad enough), but it inserts a new and distracting idea into the discussion. When the speaker "has the ball," be silent and listen. The first few times that this technique is tried, the silence after a few seconds may grow into a thunder as the pressure builds for somebody to say something.

Allowing silence is a two-way process. The listener should allow the speaker to speak at his own leisure without interruption, and the speaker should allow himself to sit in silence until his thoughts are clear. This is hard to do for some speakers. The way the author learned to endure silence was to make notes before speaking. Eye contact should be avoided during periods of silence by note taking, arranging papers, reading material under study, etc. The removal of eye contact makes silence more tolerable.

7. **Judge the content--not the delivery**

There are many times when a negotiator is sorely tempted to react angrily to the personal behavior of the opposing negotiator. And there are, in fact, times to react angrily (only if controlled), as explained elsewhere in this book. But in almost all

situations, the effective negotiator concentrates on the message and not the method. When anger and discourteous behavior accompany a proposal, take notes on the issue, not the histrionics. This will help one not to be distracted from the important points. When the objectionable delivery is over, make a tactful comment indicating your awareness of the intense feeling, and then go on to discuss the salient points of the proposal.

8. Don't try to remember too much

A negotiator should not try to deal with many proposals at one time. They should be separated and analyzed individually into bargaining "packages." This means that the wise negotiator should limit what he is willing to listen to at one time. If too many items are considered simultaneously, important points will be forgotten. There are several ways to limit what is to be remembered:

- Take careful notes on what the speaker has said and what you want to say in your response.
- Discuss only a few items at a time.
- Take a caucus when you have as much as you want to deal with.
- Do not put off consideration of items once they have been discussed; otherwise, important facts will be forgotten.
- Concentrate on the real issues and don't be distracted by extraneous consideration.

9. Deal with questions carefully

The manner in which a question is phrased can sometimes influence the response. For example, Monk A in a monastary asked his superior: "May I smoke while I pray?" The answer was "no." Later, Monk A observed Monk B smoking while in prayer, and Monk A asked: "How did you get permission to smoke while praying?" Monk B responded: "I asked the Superior if I could pray while I smoked." Similarly, a request to caucus might be

objected to if no reason is given, but a request to caucus to consider a proposal would likely be encouraged. When the union asks, "Should strikers be denied unemployment compensation?" perhaps the management negotiator should reply, "Do you mean, should strikers be entitled to unemployment compensation?" The message being conveyed here is that questions should be analyzed to determine if they are being used to influence the answer. If so, they should be restructued as needed.

10. Stick to the subject

To negotiate effectively the parties should concentrate on the specific proposal under consideration. Discussions unrelated to the issue at hand should be avoided, because they waste time and run the risk of creating new issues with which to contend. The author has observed a number of negotiators who seem to forget why they are at the bargaining table. They change the subject in the midst of resolving an issue and break the chain of thought of the opposing negotiator by interrupting him. All attention should be focused on the proposal under examination, and all extraneous discussions should be minimized. One of the worst listening mistakes that can be made is to interrupt and change the subject simultaneously. As stated before, the speaker should be allowed to take as much time as necessary to develop his points without interruption, distraction, or rebuttal.

11. Assumptions, conclusions, and anticipation

Two of the enemies of critical listening are assumptions and conclusions. Assumptions are bad, because the listener assumes that he knows what the speaker is going to say and therefore closes his mind to what actually is said. Predetermined conclusions are bad, because they make negotiations unnecessary as the listener has already made up his mind. For negotiations to work properly, the listener must keep an open mind for whatever is presented, even though the presentation may be objectionable. Keeping an open mind

does not mean that the listener is going to agree. But an open mind does provide the opportunity for discovering something the parties can agree to.

Whereas assumptions and predetermined conclusions are a handicap in negotiations, anticipation is not. By trying to anticipate what the speaker is going to say, the listener is forced to listen in a very active manner. But remember the earlier advice. Don't get so involved in anticipating the speaker that you insert words in his mouth at the first pause.

12. Remember the essential and the relevant

During a typical day of business and watching television the average person may hear 50,000 words spoken, but how many of those words are remembered by the end of the day, or the next day, or the next week? There are certain words which we do remember from each day, however. Why is that? We remember certain words and statements, because they are relevant to something important in our lives. When our boss says to place a report on his desk by a certain time, we are inclined to remember his words. However, if a co-worker should casually comment, "It's a nice day," chances are we would not remember that statement after the passage of a few minutes or a few hours, because the comment had no relevance to anything of importance in our lives.

In negotiations it is important to be able to identify the essential issues and all of the relevant facts which surround those issues. But just as important, those issues and facts must be remembered long enough to be dealt with.

13. Acknowledge the speaker's feelings

Negotiators, like most people, have a need to let others know how they feel about an issue. As long as their feelings go unrecognized, they have unmet needs which will continue to find some form of expression and satisfaction. Therefore, it is wise to demonstrate to the speaker that you are aware of his feelings on a given topic. When a

negotiator states with obvious concern, "Our team is becoming quite frustrated with the progress of negotiations," your response might be, "Yes, I understand what you are saying. Negotiatons are difficult for us both, but let's see if we can hang in there and do our best." This recognition of the negotiator's feelings can make a real contribution to maintaining a cooperative relationship.

14. Demonstrate listening

It is important that the opposing negotiator be convinced that you are listening to what he is saying; otherwise, he will repeat points needlessly and eventually become frustrated and more difficult to deal with. There are a number of techniques which can be used to assure the speaker that he is being listened to:

- Make notes on the important points being presented.
- Make notes on the points which you wish to respond with.
- Ask a question for clarification.
- Maintain casual eye contact.
- Occasionally smile, nod, or raise the eyebrows slightly. Try to avoid negative expressions, except for such controlled tactics as the flinch.
- Summarize what has been said with minor modifications where possible.

15. Take time to listen

This rule is fundamental. Unless adequate time is provided to listen thoroughly to one's opponent, all other rules for good listening become meaningless. As a matter of fact, one of the most useful tactics in negotiations is to listen to the adversary as long as he wishes to speak--within reason. The mere fact of listening is often interpreted as a concession and generates a relationship of sincerity at the bargaining table. Failure to allow adequate time to air issues thoroughly leaves the presenter with the feeling that he has been deprived of his right to seek resolution of important problems. Such feelings of

unfulfillment will likely result in an impasse, grievances, and a host of unnecessary labor problems.

Even though the proposal of the opposing party cannot be accepted, every opportunity should be provided for the spokes person to state his case. Extending the common courtesy of allowing the opposition to state their case fully has several advantages, among which are:

- Such explanations have a cathartic effect on the speaker, giving him some sense of accomplishment.
- The spokesperson can report to his own people that at least their problem was presented, even though no solution was granted.
- The process of sincere listening solidifies the working relationship between the teams.
- Naturally, there is always the chance that open end and complete discussion will reveal some avenue of agreement.

16. <u>Be free of distractions</u>

Most people can concentrate only on one thought at a time. Therefore, anything which interferes with attentive listening should be removed. Telephone calls, office traffic, outside noise, uncomfortable furniture, poor lights, and inadequate room temperature control are all impediments to good listening, because they distract both the speaker and the listener. Emotional concerns also can interfere with complete listening. A listener who is concerned with a family problem, his next appointment, or a personal health problem is a listener who likely is not fully attentive. Therefore, to the extent possible, negotiators should clear their minds of all thoughts which might be obstacles to effective listening.

17. **Listen for the manner in which statements are made**

Experienced negotiators have learned that "no" is not necessarily a definite answer to a question which would appear to have only two possible answers--"yes" or "no." There are "no's" which mean "no," and there are "no's" which mean "maybe."

For example, in response to the question, "Will you accept our last salary offer?" there is an endless array of "no's," among which are the following:

"NO! NEVER under ANY conditions!"

"I don't see how we could do that."

"No, not the way things are now."

"Well . . . no--but we'll see."

18. **Identify what was not said**

In analyzing such exchanges, it is a good idea to identify what was not said. Personnel supervisors and counselors learn early in their career to look for what has not been said in a letter of reference. If an applicant is outstanding, his or her previous employer will so state. If the applicant was less than outstanding, the ex-employer will not say that he or she was. The same phenomenon is true in negotiations. For example, in response to the question: "Will you accept our final proposal?" the negotiator simply responds: "Your proposal is not acceptable to us. You've got to do a little better." The fact that none of the following statements was made could have considerable significance:

"Your last offer is certain to precipitate a strike."

"Our membership will never accept that."

"You're crazy!"

What is not said is often more informative than what has been said.

19. Ability to evaluate important

But all of the rules above are relatively useless unless the listener possesses the ability to evaluate what is being said. This means that the listener must have clearly in mind the objective to which the conversation is to contribute. For example, if the conversation revolves around whether or not a sick leave bank should be established for employees, both negotiators must have their respective objectives on this issue clearly defined. Then, everything that is stated must be evaluated in terms of how the statement contributes toward achieving one's position on whether there should be a sick leave bank for employees.

In summary, listening at the bargaining table is an integrated, complex process involving serious discipline. It is the sum of all words spoken, the tone of the voice, the style of presentation, the expression on faces, the use of body language, and all the nuances of communications--all of which must be interpreted in the context of the milieu in which the communications take place.

CHAPTER IX

WRITING THE CONTRACT

After everything is said and done in negotiations, and after all of the best strategies and tactics have been used, what really counts in the end is what the parties agree to put in writing and sign. One of the final evaluations of negotiations is the quality of the written labor contract. Once the contract is signed and ratified, anything agreed to and not put in writing is not worth the paper it is not written on.

Some Sample Clauses

Following is an actual union proposal which was accepted in its original form by management and placed in a public sector labor contract:

All employees shall receive four days of personal leave per year.

Perhaps to the union that proposed this benefit and to the employer that accepted it there was mutual understanding at the bargaining table. However, after the contract was ratified, the provision became the source of continuing dispute between the parties. Here are some of the questions which are unanswered in that short clause cited above:

- Does this clause apply to all employees; that is, part-time employees, temporary employees, probationary employees, etc.?
- When is the leave credited to the employee? Must employees "earn" their leave, say, one day every three months? If the leave is advanced, what happens if an employee resigns after using four days of leave the first month of employment?
- Is the leave with full pay and benefits?

- At whose discretion is the leave taken--the employer's or the employee's?
- What happens to unused leave at the end of the year? Is it accumulated, wiped out, transferred to sick leave, or paid out in wages?
- Is there any limit on the number of employees which may use the leave at one time? Could all employees take off at one time as a demonstration against the employer?
- Can the leave be taken at any time? Can it be taken before and/or after weekends, holidays, or vacation periods?
- Can personal leave be taken in less than increments of one day? Or, can it be taken in hours?
- What is "personal" leave? Can it be used for any purpose whatsoever? Can it be used for illness, medical appointments, rest, and recreation?

Upon continued examination of this clause, a number of other questions could be raised, and were raised in actuality. However, the above questions should indicate that the clause is not clear. After two years of arguing over that clause and processing a number of grievances, the clause was eventually renegotiated to read as follows:

> Beginning July 1, 19__, each full-time employee will be awarded one day of personal leave to a maximum of four in one year, for each three months of continuous full-time employment. Any unused personal leave days as of June 31, 19__ will be added to the employee's accumulated sick leave. Personal leave will be restricted to matters which affect the welfare of employees and which could not have reasonably been taken care of outside of the employee's assigned work hours. Such personal leave may not be used for vacation or recreation, or to extend holidays, weekends, or vacation. Personal leave shall be taken at the discretion of the employee with prior approval of the immediate supervisor. The supervisor may limit the total number of employees on personal leave at any one time. Personal leave may be taken in increments of one-half day. The supervisor shall not deny personal leave except for good cause.

The last time that the author had contact with the agency which negotiated this clause, it was still the subject of dispute. Some of the questions which had arisen were:

- In the fifth line, what does the phrase "matters which affect the welfare of employees" mean?
- In the sixth line, what does the word "reasonably" mean?
- Can personal leave be used on Fridays and Mondays?
- Can personal leave be used the day before and/or after a holiday and vacation?
- What do the last two words mean, "good cause?"

At this point it ought to be clear to the reader that agreements which appear to be simple can develop into complicated issues. Here is another innocent clause which was negotiated in a public school district:

Teachers shall be provided a minimum of 45 minutes of planning time each day.

The above language could present several problems in implementation, e.g.,

- Who are "teachers?" Are **librarians** included? Does this mean all **classroom** teachers? **Part-time** teachers? **Elementary teachers**?
- Is there no provision for emergency exceptions?
- Can a principal provide more than 45 minutes? Should he? Is there an implication that he should, if he can?
- Do teachers have planning time during noninstructional days?
- What happens during short days and short weeks?
- What is "planning time?" Is it **free** time? Who decides what is "planning?"
- What is a "day?" Does this mean during the **workday** or during the **student school day** during which instruction normally takes place?

After two years of disputes over this clause, it was renegotiated to read as follows:

> Except for unforeseen and sudden occurrences, all classroom teachers who are assigned to grades 6 through 12 shall be provided 225 minutes of planning time each full week of instruction during the student school day when students are normally in school for instruction. Planning time shall be devoted exclusively to preparation for instruction. During weeks of less than five full days of instruction, planning time will be shorted on a pro-rate basis. In sudden and unforeseen occurrences, teachers may be required to perform

> substitute teaching duties during their planning periods. The term "classroom teacher," as used herein shall mean those full-time teachers who are assigned a full classroom teaching schedule. Planning time shall not be provided to counselors, visiting teachers, psychologists, librarians, special teachers, consultants, and other members of the bargaining unit who do not spend full-time instructing students in the classroom.

One year after this revised clause had been in effect, there had been no grievances lodged.

Some General Guidelines for Writing the Agreement

In order to minimize problems with the administration and the interpretation of the contract, here are some general guidelines for preparing language:

1. Do not rely upon verbal agreements

Although much business is conducted by unwritten understandings in all public agencies, verbal understandings should be avoided when it comes to labor contracts. True, there are some situations where the representative of the union and the representative of management have unwritten understandings regarding their mutual obligations; however, that is not to suggest that such understandings are generally advisable. As a general rule, any understanding important enough to be entered into for binding purposes is important enough to be put in writing and ratified properly. Verbal understandings can be a real temptation when time is short or when the parties simply do not wish to face the issue squarely. But, when it comes time to live up to the understanding six months later under changed conditions, problems can arise. Since such problems do arise in most cases, the major danger with verbal understandings is that the misunderstanding which inevitably ensues interposes doubt and suspicion between the two people who must rely upon each other for the success of their respective jobs.

2. Keep the contract short

Assuming proper language, the fewer topics covered in a labor contract the better--under the right conditions. For example, barring any extenuating circumstances, a labor contract that does not address the evaluation of employees is better than one that contains an extensive clause describing in great detail exactly how employees are to be evaluated. Assuming a good management rights clause, the absence of an employee evaluation article leaves the entire matter to the good discretion of the employer.

3. Write your own counters

As described earlier in this book, a very effective tactic which can be used under certain conditions is to rewrite the entire contract proposed by the union and return it to the union ready for signature. Naturally, some room for movement should be left in this contract, because, first, such an offer would be an ultimatum if there was no room to bargain; and, second, the union would not accept such an offer anyway. The purpose of this tactic is to force the union to work from the language prepared by management. The author of any contract language has a definite advantage over the other negotiator.

But even where the above tactic is not used, the management negotiator can take each union proposal that he is willing to respond to and rewrite it in language which is acceptable to management, and hopefully acceptable to the union. Unless the union language is perfect, all union proposals should be modified to some extent. If management did accept a union proposal without any change, chances are the union would conclude that it had done something wrong!

4. Record and initial all tentative agreements

Although the advice which the author is about to give may be so elementary to some readers that the advice seems useless; nevertheless, the advice will still be given, because

the author has encountered so many cases where "experienced" negotiators erred on this matter. The advice is this. **All** tentative agreements should be put in writing (preferably typewritten) at the moment that there is agreement. This written record should be dated, initialed by both negotiators, and copies made for each party. Then when it comes time to prepare the final and total agreement, it is a relatively simple task and is free of controversy.

5. **Prepare the final draft yourself**

When the author negotiated his first labor contract many years ago, he accepted a kind offer from the union negotiator who volunteered to prepare the final draft. That was the first and last time that such a procedure was followed by the author. In the final draft prepared by the union representative there were a number of variations from our tentative agreements. As a result, there were a number of disputes and hard feelings created. If the union negotiator will not allow you to prepare the final draft, then both of you can prepare the final draft and then compare them.

6. **Language should apply only to unit members**

Many government agencies and school districts are very large and contain many bargaining units. Consequently, in negotiating a contract with one unit the negotiator must be careful not to interfere with the contractual rights of other unit members. Also, the negotiator must be cautious in establishing any precedents which might be viewed as applicable to other bargaining units. Therefore, when bargaining with one unit of employees, great care should be taken to review the proposals for their impact on the wages, benefits, and working conditions of employees in other bargaining units. For example, in one situation personally familiar to the author, the employer was charged with an unfair labor practice, because a contract had been entered into with one unit of

employees which in part stated that "workplaces would be cleaned daily according to normal custodial care." The trouble was, however, this clause violated the contractual working conditions of the custodians, who were in a different bargaining unit. So, when dealing with one bargaining unit, think about other bargaining units, too.

7. Use escape clauses

There are times that management would be willing to grant something to employees "when possible." The phrase, "when possible" is a form of an escape clause. Escape clauses are not to be used by management to trick the union, but to indicate to the union that when it is able, management will do something. For example, the union asks that all employees be allowed to choose the time that they go to lunch. Obviously, such a request would be unwise in many employment situations. Nevertheless, management would like to cooperate with employees to the extent that their request can be met. So, management responds that employees may choose the time that they take their lunch "to the extent administratively reasonable." Such a clause is not a license for the employer to choose the time that employees go to lunch. This agreement clearly says that employees will choose their own lunch time, unless management is prepared to show that their choice is administratively unreasonable. Consequently, don't entertain the idea that such clauses are composed of weasel words. They are not.

8. Avoid the incorporation of nonnegotiated documents

Occasionally, the author will see labor contracts which have included in them by an incorporation statement some document (job descriptions, legal citations, handbooks, etc.) which was not actually negotiated between the parties. This practice is not wise. The only items in the labor contract should be those that were specifically negotiated by the parties. The dangers of including other materials are several:

. The language of the document may not be contract language.

- The parties may not understand the content of the document.
- The document may be replaced with a different one.

9. Delineate the agreement

To the extent possible, a labor contract should spell out clearly, free of dispute, exactly what the parties have agreed to and have not agreed to. Aside from the preparing of contract language along the lines suggested elsewhere in this chapter, four provisions should be addressed which will help delineate the contract:

- The grievance definition
- A management rights clause
- A zipper clause
- The absence of a past-practice clause

(a) The grievance definition. As a general rule, grievances should be defined as "a complaint by an employee that there has been to him/her a personal loss, injury, or inconvenience, because of a violation, misinterpretation, or misapplication of the specific terms of the labor contract." Although there are other similar definitions of a grievance, this one makes it clear that matters outside of the labor contract are not grievable.

(b) The management rights clause. The primary function of management is to manage the agency. In order to perform this paramount responsibility, management must keep its management rights as unencumbered as possible. Such a clause in the contract makes it clear that the employer has not given up any of its rights unless specifically stated in the contract.

(c) The zipper clause. In order to make the contract clear that there are no other agreements between the parties other than those contained in the labor contract, management should be sure that a "zipper" clause is included in the contract.

(d) The past practice clause. To assure that management does not agree to provisions which it is not aware of, it should refrain from including a past-practice or maintenance of standards clause in the final agreement. Such clauses obligate management to continue all "past practices" and "maintain" all past "standards," even though neither the union nor management may know what the "practices" and "standards" are.

The Canons of Construction

Most of the grievances which arise from labor contracts concern disputes over the meaning of language. In resolving such disputes certain guidelines are used by arbitrators. The guidelines listed in this section, however, are not immutable. But, they are very worthy of consideration in writing contract language. If these rules are followed, much agony can be avoided in contract interpretation.

I. Specific rules for interpreting language

- In the absence of ambiguity or obvious error, the language of the contract prevails.
- The ordinary meaning of words is looked to first in interpreting contracts.
- The contract cannot be altered simply because one party claims that something different was intended in the contract.
- Implications will not be read into the agreement, unless there is evidence to justify such a reading.
- Unless words have special meaning, words will be accorded their first and customary meaning.
- Failure to include a provision in the contract is proof that it was intended to be omitted.
- Disputes caused by ambiguity are resolved against the author of the language.
- Ambiguous language will be interpreted realistically and reasonably.

- Practices consistent with the agreement remain in force unless the contract specifically provides otherwise.
- It is assumed that every phrase or provision was included in the contract for a reason.
- An interpretation of an ambiguity which contradicts another provision will generally be avoided.
- Whichever party seeks to enforce a side or verbal agreement, that party bears the burden of proof.
- Specific language generally prevails over general language when the two are in conflict.
- Compromise efforts which took place during the negotiations which led to the disputed language shall not generally be considered.
- Custom and past practice may be used to determine the meaning of disputed language.
- A labor contract cannot grant that which is prohibited by law.
- Interpretations which result in harsh and damaging actions against either party will be generally avoided.
- Clear and specific language prevails over ambiguous language where there is conflict between the two.
- Normally a simple reading should suggest a clear meaning.
- Events at the bargaining table can influence the interpretation of language.
- The agreement must be read as a whole to interpret any part.
- Reasonable language prevails over absurd language when the two are in conflict.
- Technical terms and other special words will be accorded their special definition.

- Absent specific reason to do otherwise, a word defined one way shall be defined in the same way throughout the contract.
- When renegotiations changes language, it is assumed that the change was for a reason.
- Previous verbal agreements cannot override the written agreement.
- Past practice may be looked to in order to resolve a language dispute. A past practice exists when repetitive like situations are handled in a consistently similar manner. However, past practice cannot abrogate clear and unambiguous language.

2. A special word about lists

Quite often a negotiator must make a decision to use a list or not to use a list; and, if a list is used, what is the proper structure? For example, refer to the clause in this chapter on personal leave. The negotiators had to decide whether to list all of the reasons what personal leave could be used for. They could have agreed that personal leave could be used for car breakdowns, a flooded basement at home, an appointment with an attorney, a trip to settle an estate, to get a child out of jail, ad infinitum. Such a list would have been too vague. Right or wrong, the two negotiators decided on the language that appears in the clause.

Therefore, the first rule about lists is:

- **Don't use a list if you can agree to a phrase which describes everything that you would be willing to include in the list.**

When such a phrase cannot be found, then a list must be used. When lists are used, follow these rules:

- **When one or more of a class are included in a list, all others are excluded, unless language indicates otherwise.** For example, in the clause, "Bereavement

leave may be used for necessary funeral arrangements and attendance at the funeral," there are only two reasons that bereaveme t leave can be taken. All other reasons (mourning, etc.) are excluded.

- **When a list states specific exceptions, there are no other exceptions.** For example, in the clause, "Personal leave may be used for emergencies and personal business, except personal leave may not be used for recreation or vacation," there are only two exceptions listed. There are no others.
- **When a general phrase follows a list, the general phrase will usually only include matters similar to those in the list, in which case no dissimilar matters will be included.** For example, in the clause, "Employees shall be granted excused tardiness if caused by snowstorms, floods, hurricanes, etc.," the "etc." is meant to mean, ". . . and other severe weather conditions that preclude the employee from arriving at work on time." Therefore, an ice storm would be a valid reason for tardiness, but tardiness due to slow traffic because of road construction would not be an excused tardiness.

3. <u>A special word about ambiguities</u>

Practically all of the canons of language construction listed in this section deal with ambiguities in language. There are two levels of ambiguities in language. There are **patent** (obvious or evident) ambiguities, and there are **latent** (hidden or concealed) ambiguities.

- **Patent ambiguities are those which are defective and obscure on their face.** For example, glance at this clause: "An employee who does not work before the holidays or the day after the holiday shall not be paid for the holiday." A simple reading of this clause reveals an ambiguity. Such words and phrases as

"compelling," "as needed," "as appropriate," "just cause," "good reason," "important," etc., are examples of patent ambiguities.

- A latent ambiguity exists when language is clear at first reading, but some external unanticipated event causes problems. Take the clause, "Teachers shall be provided five planning periods per week." Six months after the clause was ratified, schools were closed two days in one week due to inclement weather and there was a class grievance lodged to be given five planning periods within the remaining three days of that week.

4. The super canon

When there is a dispute over language interpretation, the parties' intentions will be judged by the final form of expression, against a backdrop of statements, argumentation, and evidence advanced by the parties. The arbitrator will consider all of the guidelines listed in this chapter and will issue a binding decision. Therefore, remember that:

- All words and phrases have a meaning, and both negotiators should be sure they agree on those meanings.